The Handbook Series

Marriage and Divorce

JOHNSEN

Central BAPTIST
THEOLOGICAL SEMINARY

KANSAS CITY, KANSAS

THE HANDBOOK SERIES

MARRIAGE AND DIVORCE

THE HANDBOOK SERIES

AGRICULTURAL CREDIT	$1.25
AMERICANIZATION, *2d ed.*	1.80
CAPITAL PUNISHMENT	2.40
CHILD LABOR	2.40
CLOSED SHOP, *2d ed.*	2.00
DEBATERS' MANUAL	1.50
DISARMAMENT	2.25
EUROPEAN WAR, VOL. II	1.25
FUNDAMENTALISM VS. MODERNISM	2.40
GOVERNMENT OWNERSHIP OF COAL MINES	2.40
INDUSTRIAL RELATIONS	
EMPLOYM'T MANAGEM'T	2.40
MODERN INDUSTRIAL MOVEMENTS	2.40
PROBLEMS OF LABOR	2.40
MARRIAGE AND DIVORCE	2.40
MUNICIPAL GOVERNMENT	2.40
NEGRO PROBLEM	2.25
PRISON REFORM	1.25
PROHIBITION: MODIFICATION OF THE VOLSTEAD LAW	2.40
SHORT BALLOT	1.25
SOCIAL INSURANCE	2.40
SOCIALISM	1.25
STUDY OF LATIN AND GREEK	1.80
TAXATION	2.25

THE HANDBOOK SERIES

SELECTED ARTICLES ON

MARRIAGE AND DIVORCE

COMPILED BY
JULIA E. JOHNSEN

NEW YORK
THE H. W. WILSON COMPANY
1925

LIBRARY
CENTRAL BAPTIST SEMINARY
KANSAS CITY 2, KANSAS

Published August 1925

Printed in the United States of America

CENTRAL
SEMINARY
KANSAS CITY, MO.

301.42026
J65

EXPLANATORY NOTE

The need that has been felt for harmonizing our forty-eight divergent state laws on marriage and divorce has at various periods taken the form of agitation for a uniform law. The proposal for uniformity has taken two aspects, that of uniform state laws, and that of a Federal law applying to all the states. The present tendency is to stress the need of a uniform national law. In the last Congress, the Sixty-eighth, eight resolutions were introduced to amend the Constitution of the United States with the view of enabling Congress to legislate on the subjects for the country.

The present handbook endeavors to give a summary of various leading aspects of marriage and divorce that tend to elucidate the legislative problem, by means of up-to-date, representative reprints, a selected bibliography and briefs. As a background the historical, sociological, ethical, and other points of view are touched upon. The discussions relating more directly to a uniform national law are arranged under headings of general, affirmative, and negative material, and are as impartially selected as material permits. This discussion includes, also, the aspect of uniform state laws. The arrangement of the bibliography corresponds with that of the reprints. A few references more directly for or against divorce are followed by the abbreviations (fd) and (ad).

Although the handbook is compiled primarily for debaters and general readers, it has been made of as wide appeal as possible and it is hoped it will be found useful as well to all who have reason to give thought to legislative reforms or to deal with the practical problems involved in maritally disrupted homes.

Julia E. Johnsen

November 2, 1924

45452

Digitized by the Internet Archive
in 2026

https://archive.org/details/selectedarticles0000juli

CONTENTS

EXPLANATORY NOTE v

BRIEF

Introduction xi

Affirmative xi

Negative xvi

BIBLIOGRAPHY

Bibliographies xxi

General References xxi

Uniform Marriage and Divorce Law xxxviii

INTRODUCTION 1

MARRIAGE AND DIVORCE

Lichtenberger, James P. Origin of Divorce.....
.....Divorce: a Study in Social Causation. 7

Wallace, A. W. Marriage and Divorce in Church and State.....Virginia State Bar Association Reports. 12

Myers, Gustavus. Rapid Increase of Divorce.....
.....Current History Magazine, New York Times. 16

Hartt, Rollin Lynde. Causes in American Cities.....
.....World's Work. 28

Spencer, Anna Garlin. Problems of Marriage and Divorce.
..... Forum. 39

Russell, Bertrand. Marriage.....
.....International Journal of Ethics. 51

Ross, Edward Alsworth. Significance of Increasing Divorce .....Century. 54

Adler, Felix. Marriage.....Hilbert Journal. 62

Gibbons, James Cardinal. Divorce.....Century. 78

Morgan, J. W. Ministers and Divorce..Homiletic Review. 84

Wilkinson, Marguerite O. B. Education as a Prevention of Divorce .....Craftsman. 88

Adams, Elizabeth C. Will to Love.....Atlantic Monthly. 97
Allinson, Anne C. E. Open Door in Marriage.....
.....Atlantic Monthly. 101

UNIFORM MARRIAGE AND DIVORCE LAW

GENERAL DISCUSSION

White, Mrs. Edward Franklin. America's Need of a Federal Marriage and Divorce Law.....
.....Current History Magazine, New York Times. 117
Grant, Robert. Marriage and Divorce.....
.....Scribner's Magazine. 127
Howard, George Elliott. Bad Marriage and Quick Divorce.
.....Journal of Applied Sociology. 137
Towne, Arthur W. Legal Control of Young Girl Marriages.
.....Journal of Social Hygiene. 146
Koegel, Otto E. Common Law Marriage.....Family. 153
Hawley, James H. Uniformity of Marriage and Divorce Laws.....Governor's Conference, Proceedings. 160
Livy, Milton Ives. Marriage and Divorce..... 165
Chapin, H. Gerald. United States of Matrimony.....
..... Everybodys. 179
Koehn, George L. Is Divorce a Social Menace?.....
.....Current History Magazine, New York Times. 189
Schoonmaker, Nancy M. Divorce Laws of America and Europe...Current History Magazine, New York Times. 201
Boston, Charles A. New York Law on Marriage and Divorce.....Bench and Bar. 208
Cooper, Courtney Ryley. Man Who Is Casting Out Divorce.....Ladies' Home Journal. 227

AFFIRMATIVE DISCUSSION

Uniform Divorce Bill.....Journal of Social Hygiene. 241
Capper, Arthur. Proposed Amendment to the Constitution. 244
White, Mrs. Edward Franklin. Marriage and Divorce. 250
Wise, Jennings C. Shall Congress Be Given Power to Establish Uniform Laws?.....Central Law Journal. 253
Young, George B. Uniform State Laws.....
.....American Bar Association Journal. 266

NEGATIVE DISCUSSION

Ritchie, Albert C. Back to States Rights..World's Work. 273
Question of Divorce.....Freeman. 275
Smith, Walter George. Ethics of Divorce.....
.....Case and Comment. 280
Norris, George W. Divorce and the Means of Diminishing
It. .....Editorial Review. 284
Caverno, Rev. Charles. Uniform Divorce Law.....
.....Bibliotheca Sacra. 288
Divorce Evil.....Independent. 291

BRIEF

RESOLVED: *That an amendment to the United States Constitution should be adopted giving Congress power to establish and enforce by appropriate legislation uniform laws as to marriage and divorce.*

INTRODUCTION

I. The growing instability of the marital relation and the home has become a matter of grave social concern.

II. One of the foremost remedies advocated for reform is that of uniform laws secured by Federal jurisdiction through an amendment to the United States Constitution.

III. The questions at issue are:
   - A. Do conditions point to any essential need for legislative change?
   - B. Is uniformity of legislation in the several states desirable?
   - C. Would a Federal law, through an amendment of the Constitution, be the most logical and practicable remedy?

AFFIRMATIVE

I. There is essential need for the proposed legislation.
   - A. Present conditions are a menace to the home and the welfare of society.
     1. Divorce has increased inordinately.
        - a. It has increased 500 per cent in the last twenty years.

b. There was 50 per cent more divorce in 1924 than in 1923.
c. Thirteen and four tenths per cent of all marriages in 1923 ended in divorce.

2. The ease with which many divorces are granted has become a scandal.
   a. Some states allow divorce for practically any cause.
   b. Divorces are granted fraudulently, without actual jurisdiction, and without shifting the real facts of the case.
3. Too easy divorce is leading to moral deterioration.
   a. There is a growing loss of feeling for the sanctity and permanency of the home.
4. The break-up of homes affect large numbers of children adversely.
   a. Eighty thousand children each year, or nearly two million children in twenty years, most of them under ten years of age are deprived of one or both parents.
   b. Eighty per cent of child criminals are victims of divorce conditions and come from broken homes.
5. There is great laxity in marriage laws, this condition being an insufficient safeguard to society and also opening the door to further divorce.
   a. Many of the laws are inadequate as to marriageable age, requirements for license, notification, evasion, registration, common law marriages, etc.
   b. They permit marriages that tend to increase our social problems by the propagation of the unfit, the feeble-

minded, insane, diseased, criminal, paupers, etc.

B. Great confusion exists.
   1. Each state has its own provisions as to requirements in all the multitude of details that come up for action legislatively.
   2. States vary as to recognition accorded to marriages and divorces consummated elsewhere.
   3. The laws are so involved that a status may be in doubt even to the legal profession until decided by court, or apparent security may be enjoyed until unexpected legal relations show the status to be invalid.

C. Conditions give rise to great injustice.
   1. The law may disgrace parties guilty of no actual wrong.
      a. Parties may be legally married or divorced in one state, but the marriage or divorce may be bigamous, adulterous, fraudulent or void in others.
      b. Children may be illegitimized.
   2. Inheritance rights may be lost.

II. Uniformity of legislation in the several states is desirable.

A. A single standard is needed for all the states.
   1. No state now has control over its citizens in relation to their marital status.
      a. It is more or less easy to evade the laws of any state by temporary migration to another state.
   2. The marital status of citizens is a matter of national, as well as of state concern.
      a. All are citizens of the nation as well as of the state.
      b. Families go from state to state.

3. There is no reason for geographical variations.
   a. The standard of what is right and good applies in one state just as much as in another.
   b. The differences of climate, customs, etc. do not adequately explain the divergencies of the laws.

B. Prevailing evils would be greatly reduced by uniform laws.
   1. Divorces would be checked.
      a. Many trivial causes for divorce would be removed.
         (1) It is not likely such lax laws would be allowed as now prevail in some states.
   2. Much injustice would be removed.
      a. Fraud would tend to be prevented.
         (1) The possibility of evasion would be more limited.
      b. Court decisions could be enforced.
         (1) In alimony or support of children absconding husbands or fathers could be extradited.
         (2) The question of jurisdiction would be settled.
      c. Discrimination between the rich and the poor would tend to become equalized.
         (1) The rich would be less able to evade the law by leaving the state, and more subject to local law just as the poor must be.
   3. Legal complications would be overcome and laws would tend more to be carried toward the ideal.

C. Uniformity of law will not tend materially to lower standards.

1. Although a few states might have their strict standards lowered, the majority would simply tend to have differences adjusted.
2. A qualifying clause might be added providing that every state might exclude, as to its own citizens duly domiciled therein, any or all causes for absolute divorce in the laws adopted.
    a. This would enable strict states such as New York and North Carolina to close their own courts to divorce actions on the same grounds as now while obligating them in every other respect.

III. A Federal law, through amendment of the Constitution, would be the most logical and practicable remedy.

A. Uniform laws cannot be attained.
    1. Attempts to attain them have failed in the past.
        a. In 1923 the uniform divorce law was, after fourteen years effort, accepted in only three states.
    2. Even if uniform state law should be attainable, any state legislature could revoke the uniform laws of its predecessors.

B. There could be no administrative objection.
    1. Its enforcement could be left with state and local courts as is now the case.

C. It would be only an extension of the principle of centralized control which the national government has found necessary in other lines.
    1. We have Federal laws in interstate commerce, in bankruptcy, and in naturalization and many other things. These are no more important to the nation than the

integrity and welfare of the family and the home, our fundamental social institutions.

D. A Federal law is needed as a basis for international comity in marriage and divorce.
   1. Until we have adequate national regulation we cannot expect to benefit by negotiations with other countries.

E. Ours is the only country of note which has no unified law.

NEGATIVE

1. There is no necessity for any radical change in our legislation on marriage and divorce.
   A. The instability of the family and the prevalence of divorce are the result of natural evolution and changing social conditions.
      1. They are not confined to our country alone.
      2. They are the result of changing social ideals as to marital conditions.
      3. They are a concomitant of woman's improved status.
         a. She no longer finds it necessary as in the past to endure conditions that have become intolerable.
   B. There is no menace to the integrity of the family.
      1. It is an institution too deeply fundamental.
      2. Divorce, in the majority of cases, comes only when real marriage no longer exists.
      3. Cases given publicity are not usually representative of conditions.
         a. Special cases are played up on account of wealth, prominence, or other exceptional circumstances.

C. Our divorce and marriage laws are what the people wish and are responsive to public demands.

D. They affect only a small percentage of the total population.

II. Uniformity would be impracticable and undesirable.

A. A single standard would be difficult to attain.

1. The present laws vary from the most liberal to the most restricted.

a. North Carolina permits no divorce whatever, while Washington permits divorce for any cause deemed sufficient by the court.

b. In marriage also there is a great diversity of standards and provisions.

2. Standards, customs, social and economic conditions differ in different parts of the country.

a. Different sections are conservative or liberal in view, have a preponderance of one racial stock or another, have race questions, earlier maturity, etc.

3. The questions are too complex for general legislation.

B. Uniformity would check the valuable social laboratory experiments conducted by the various states.

1. Legislation too far ahead of public sentiment for general adoption can be tried out in the different localities.

a. Eugenics and illegitimacy are as yet too controversial to be tried out nationally.

C. Uniformity would not materially relieve any evils.

1. Migratory divorces are not so common as appears.
   a. Statistics show that most divorces are granted to bona fide residents of a state.
2. There is no guarantee uniformity would mean equality.
   a. Between men and women, in the differences as to marriageable age, alimony, custody and education of minor children, etc.
   b. Between rich and poor, for European divorces would still be possible.

D. Uniformity would have a tendency to develop new evils.
1. In states where laws were liberalized, as New York and North Carolina, the door would be opened to a large number of new divorces.
2. Where the tendency was felt as a greater strictness, it would tend to unhappiness, encourage evasion, and make marriage so hard as to encourage immorality.

III. A Federal law would not be the most logical or practicable remedy.

A. Marriage and divorce are more properly left to the separate states.
1. The rights of the state are paramount and should not be interfered with in matters of so purely domestic concern.
2. The states are closer to the people and more representative.
3. They are doing what they can of their own accord to improve their laws.
   a. In 1923 there were forty marriage bills before the legislatures of only twenty-two states.

B. A constitutional amendment should not be lightly undertaken.
   1. It is a mistake to amend the Constitution constantly.

C. An amendment would be difficult to obtain.
   1. There is not sufficient public opinion upholding it.
   2. It would require two-thirds vote of each house in the legislatures of three-quarters of the states.
      a. These states have refused to adopt uniform laws.

D. The national laws of foreign nations are no guide in regard to our internal policies.
   1. They are small and homogeneous.

D. Other remedies for improvement of conditions should be tried out, without so radical a change as is proposed.
   1. Constructive conferences by states.
   2. Each state should adopt suitable provision for jurisdiction, either singly or in cooperation with other states, for much of the scandal and uncertainty has arisen by the assumption by one state of jurisdiction that has failed of recognition in another state.
      a. It should require that marriage and divorce evasion of its own citizens should not be recognized.
      b. It should require of parties coming to it proof that the desired marriage or divorce would not be illegal in the state of residence.
      c. It should give recognition to any status entered upon in good faith while under other jurisdiction than its own.

3. Divorce proctors should be encouraged, to expose collusion or perjury, and if possible to reconcile couples who might be needlessly parted.
4. Marriage should be made more difficult so as to obviate the need of so many unsuitable divorces.
   a. By license requirements, waiting periods, prevention of certain unfit marriages, etc.
5. Since divorce is a symptom and not a cause of ills in the social body, efforts should be made to improve conditions at the source.
   a. Religion and better education as to moral concepts and social duties is needed.
   b. Social conditions tending to instability in the home should be improved.

BIBLIOGRAPHY

Bibliographies

New York Public Library. List of works in the New York Public Library relating to marriage and divorce. 48p. New York. 1905.

Shurter, Edwin Du Bois, and Taylor, Carl Cleveland. Uniform marriage and divorce laws. *In* Both sides of 100 public questions briefly debated. p. 12-13. Hinds, Noble & Eldredge. New York. 1913.

United States. Library of Congress. List of references on uniform divorce laws. 8p. Dec. 19, 1923. typw. Public Affairs Information Service. New York. 90c.

United States. Library of Congress. References on divorce: list of references submitted to the Committee on the judiciary. United States Senate, 63rd Cong. 3d Sess. in connection with S.J. Res. 109, a resolution proposing an amendment to the Constitution of the United States relating to divorces. 110p. Washington, D.C. 1915.

Classified as follows: Bibliography, general, countries, uniform divorce laws, church and divorce, Jews and divorce, fiction.

General References

Books, Pamphlets and Documents

Adler, Felix. Marriage and divorce. 59p. McClure, Phillips & Co. New York. 1905. (ad)

American Sociological Society. Publications. 3: 150-80. 1908. Is the freer granting of divorce an evil? with discussion. George Elliott Howard. (fd)

Arner, George B. Louis. Consanquineous marriages in the American population. 101p. Columbia University. New York. Mar. 1908.

Bechmann. H. G. "Married misery" and its Scandinavian solution; a reprint of Lord Buckmaster's arti-

cles and a digest of recent Scandinavian legislation. 127p. Goldscroll. London. 1923.

Bible and the Scriptural grounds of divorce legislation, by a churchman. 135p. R. G. Badger. Boston. 1921. (ad)

Blech, Alexis (Lionel Delsarte). Debt of honour, tr. by Fred Rothwell. George Allen & Unwin. London.
A novel of eighty years ago, centered in divorce.

Bosanquet, Helen. Family. 344p. Macmillan. New York. 1906.
Meaning and importance of the family as an institution in human society.

Brewer, Annette Fitch. Story of a mother love. 278p. The author. Jefferson, Ohio.
A divorced woman's struggle for the recovery of her child.

Bryce, James. Marriage and divorce under Roman and English law. In Studies in history and jurisprudence. Vol. 2. p. 381-478. Clarendon Press. Oxford. 1901.

Buchanan, Edgar Simmons. Christ's teaching on divorce according to the earliest mss. 104p. New York. 1925. (ad)

Carson, William English. Marriage enough; a study of marriage and divorce. 481p. Hearst's International Library Co. New York. 1915.
Facts and opinions dealing with people united in matrimonial marriage and divorce increases, and an endeavor to forecast probable future results.

Chapman, Cecil. Marriage and divorce; some needed reforms in church and state. Report of the Royal Commission. 172p. D. Nutt. London. 1913. (ad)

Chesterton, Gilbert Keith. Divorce versus democracy. 14p. Society of SS. Peter and Paul. London. 1916.

Davenport, C. B. Marriage laws and customs. In International eugenics congress. 1 Sec. II. p. 231-5. Eugenics Education Society. London. 1912.

Dealey, James Quayle. Family in its sociological aspects. 137p. Houghton, Mifflin Co. Boston. 1912.
Marriage and divorce. p. 95-108.

Denlack, Alfred. Divorce a blessing and not an evil. 31p. Denlack Pub. Co. Osage City, Kan. (fd)

Dreiser, Theodore. Marriage and divorce. *In* Hey rub-a-dub-dub. p. 212-24. Boni and Liveright. New York. 1920.

Same: Forum. 64: 26-36. Jl. '20.

Eulalia, Infanta of Spain. Divorce. *In* Thread of life. p. 51-62. Duffield & Co. New York. 1912. (fd)

Ferrero, Guglielmo. Woman and home. *In* Ancient Rome and modern America. p. 60-76. G. P. Putnam's Sons. New York. 1914.

Forsyth, Peter T. Marriage; its ethics and religion. 152p. Hodder and Stoughton. London. 1912.

Franklin, B. Marriage and divorce in physical, psychial, moral and social relations. 208p. E. & J. B. Young & Co. New York. 1889.

Gallichan, Catharine Gasquoine Hartley. Divorce (today and tomorrow). 187p. Leonard Parsons. London. 1921.

Includes chapters on the history of divorce law, divorce laws of other lands, specific divorce suits, discussions in Parliament, cost of divorce to the poor, an attempt to answer the Christian objections to divorce, and an attempt to formulate a new divorce law.

Gallichan, Catharine Gasquoine Hartley. Truth about woman. 404p. Dodd, Mead & Co. New York. 1914.

Social forms of the sexual relationship—marriage—divorce. p. 331-59.

Gallichan, Walter M. Great unmarried. 224p. T. W. Laurie, Ltd. London. 1916?

Gigot, Francis E. Christ's teaching concerning divorce in the New Testament; an exegetical study. 281p. Benziger Bros. New York. 1912.

Gillette, John Morris. Family and society. 164p. McClurg. Chicago. 1914.

Origin of marriage. p. 32-53; Evolution of the family. p. 54-83; Conditions affecting the family: marriage, divorce. p. 84-9, 95-121.

Goodsell, Willystine. History of the family as a social and educational institution. 588p. Macmillan. New York. 1915.

Gore, Charles. Questions of divorce. 57p. John Murray. London. 1911. Scribners. New York.

An English Bishop's views. Includes chapter on Law of the Church of England.

Great Britain. Foreign Office. Miscellaneous. 1911, No. 11. Laws relating to marriage in force in certain foreign countries. 337p. Harrison and Sons. London. 1911.

Gives laws of twenty-six European, and American countries.

Great Britain. Royal Commission on Divorce and Matrimonial Causes. Report. 207p. Eyre and Spottiswoode, Ltd. London. 1912.

Also, Minutes of evidence. 3vol. 1912; Appendices to the minutes of evidence and report. 210p. 1912.

Hamilton, Helen. My husband still; a working woman's story. 303p. G. Bell and Sons, Ltd. London. 1914.

Haynes, E. S. P. Divorce as it might be. 81p. W. Heffer and Sons, Ltd. Cambridge. 1915.

Haynes, Edmund S. P. Divorce problems of today. 120p. W. Heffer and Sons, Ltd. Cambridge. 1912. (fd)

p. 119-20. Bibliography.

Hill, Joseph Adna. Marriage statistics in the United States. *In* International congress on hygiene and demography. XV. Transactions. Vol. 6. p. 202-9. Washington, D.C. 1913.

Hobhouse, L. T. Marriage and the position of women. *In* Morals in evolution: a study of comparative ethics. p. 132-78. 1923.

Holmes, John Haynes. Marriage and divorce. 63p. B. W. Huebsch. New York. 1913.

Howard, George Elliott. Family and marriage: An analytical reference syllabus. 177p. University of Nebraska, Department of Political Science and Sociology. Lincoln. 1914.

Select bibliography, Problems of marriage, divorce, and the family. p. 112-24.

Howard, George Elliott. History of matrimonial institutions. 3vols. University of Chicago Press. Chicago. 1904.

Huntley, Florence. Harmonics of evolution. 463p. The Author. Chicago. 1897.
Natural, legal, true marriage, and divorce. p. 333-447.

Ibsen, Henrik. Doll's house: drama. 124p. Walter H. Baker & Co. Boston.

Ingram Kenneth. Is divorce needed? 95p. Wells Gardner, Darton & Co., Ltd. London. 1914. (ad)

International Congress on Hygiene and Demography, XV. Transactions. Vol. 6. p. 199-209. 1913. Divorce statistics. S. W. Dike; Marriage statistics in the United States. J. A. Hill.

Kathrens, Richard D. Let's civilize the marriage laws. 165p. Burton Pub. Co. Kansas City, Mo. 1913. (fd)

Key, Ellen. Love and ethics. 64p. Ralph Fletcher Seymour Co. Chicago. 1912.

Key, Ellen. Love and marriage. 399p. Putnam's. New York. 1911.
Review: Current Literature. 50:403-5. Ap. '11; Forum. 46: 385-9. O. '11; Hearst's Magazine. 21:2151-8. Ap. '12. J. B. Kerfoot; Nation. 94:260-2. Mr. 14, '12.

Kitchin, S. B. History of divorce. 293p. Chapman and Hall, Ltd. London. 1912.

Lacey, T. A. Marriage in church and state. 248p. Robert Scott. London. 1912.

Larson, Christian D. My ideal of marriage. 109p. Crowell. New York. 1916.

Leathley, Samuel Arthur. History of marriage and divorce. 160p. J. Long, Ltd. London. 1916.

Letourneau, C. Evolution of marriage and of the family. 373p. Scribner. New York. 1900.

*Lichtenberger, James P. Divorce; a study in social causation. 230p. Columbia University. Studies in History, Economics , and Public Law. Vol. 35, No. 3. New York. 1909.

McCabe, Joseph. Influence of the church on marriage and divorce. 217p. Watts & Co. London. 1916.

McCoid, Arthur Belleville. Husbands and wives. 270p. St. Hubert Pub. Co. Chicago. 1921.
Talks inspired by contact with the marriage relation in the courts.

National Probation Association. Proceedings. 1922: 133-43. Divorce problem in the domestic relations court. Alfred C. Crouse.
An analysis of one hundred confidential interviews with applicants for divorce in Hamilton County, Cincinnati.

Oakley, George R. Why we oppose divorce? 23p. Society for Promoting Christian Knowledge. London. 1913. (ad)

Osman, Will B. Divorce and re-marriage; the other side. 251p. Mayhew Pub. Co. Boston. 1905. (fd)

Petrovits, Joseph J. C. New church law on matrimony. 458p. John Joseph McVey. Philadelphia. 1919.

Post, Louis F. Ethical principles of marriage and divorce. 138p. Public Pub. Co. Chicago. 1905.

Ringrose, Hyacinthe, ed. Marriage and divorce laws of the world. 270p. Musson-Draper Co. London. 1911.

Schouler, James. Treatise on the law of marriage, divorce, separation and domestic relations: 6th ed. in three volumes, by A. W. Blakemore. Matthew Bender & Co. Albany, N.Y. 1921.

Schroeder, Theodore. Evolution of marriage ideals. 12p. Albert Brandt. Boston. 1915.
Reprinted from Arena. 34: 578-89. D. '05.

Schroeder, Theodore A. Impurity of divorce suppression. 4p. A. Brandt. Boston. 1905. (fd)
Reprinted from Arena. 33: 142-6. F. '05.

Sellin, Johan Thorstein. Marriage and divorce legislation in Sweden. 148p. J. Thorstein Sellin, Wharton School of Finance and Commerce, University of Pennsylvania. Philadelphia. 1922.

Smet, Canon de. Betrothment and marriage. 2vol. B. Herder, 17 South Broadway. St. Louis, Mo. 1912, 1913.

Thwing, Charles Franklin and Butler, Carrie B. Family destroyed. *In* Family. p. 186-229. Lothrop, Lee and Shepard Co. Boston. 1913.

Tibbits, Charles John. Marriage making and marriage breaking. 168p. Stanley Paul & Co. London. 1911. (fd)

Advocates reform in England.

United States. Bureau of the Census. Marital condition of the population, 1920. p. 383-604. 1922.

United States. Bureau of the Census. Marriage and divorce, 1887-1906. Bulletin No. 96. 99p. 2d ed.

United States. Bureau of the Census. Marriage and divorce, 1916. 47p. Government Printing Office. Washington, D.C. 1919.

Viator, pseud. Divorce in its ecclesiastical aspect. A rejoinder to "The question of divorce," by C. Gore. 79p. Stanley Paul & Co. London. 1912.

Wells, Herbert George. Divorce. *In* Social forces in England and America. p. 242-54. Harper. New York. 1914.

Westermarck, Edward. History of human marriage. 3vol. Macmillan. New York. 1921.

PERIODICALS

American Journal of Sociology. 14:766-96. My. '09. Is the freer granting of divorce an evil? George Elliott Howard and others.

Review: Current Literature. 47:60-3. Jl. '09. Is freer divorce an evil?

American Journal of Theology. 10:452-74. Jl. '06. Church and divorce. J. W. Richard.

The teaching of the Roman Catholic, the Lutheran, the Continental Reformed churches, and the Church of England on divorce.

American Law Review. 20:718-26. S. '86. Divorced person's right and capacity to marry. David Stewart.

American Law Review. 36:204-13. Mr. '02. International law of marriage. Walter G. F. Phillimore.

American Law Review. 49:65-74. Ja. '15. Mercenary matchmakers.

American Law Review. 57:404-19. My. '23. Marriage and divorce laws of Mexico. K. B. Gardner.

American Magazine. 77:42-8. Ja. '14. Court of hope and good will; Chicago court of domestic relations. I. M. Tarbell.

Am. Contemporary Review (or 19th Ag.). Living Age. 285:426-9. Ap. 20 '15. Some ecclesiastical Canada Opinions. 57 mar-s. Q. '15.

American Magazine. 90:51. N. '20. Twenty rules for a happy marriage. Frank Crane.

American Magazine. 97:28-9. My. '24. Many common causes of unhappy marriages. Kenneth McGaffey.

American Magazine. 97:23. My. '24. What shall I teach Bud and Jane about marriage. Edgar A. Guest.

Annals of the American Academy. 107:175-81. My. '23. Divorce in Canada. Jessie A. Rives Hall.

Arena. 30:258-9. Ag. '03. Whom God hath joined. Mabel MacCoy Irwin. (ad)

Arena. 32:201-3. S. '04. First cause of divorce. Winnifred Harper Cooley. (ed)

Arena. 33:16-26. Ja. '05. Light versus legislation. Katrina Trask.

Brief published, Bureau of Statistics, p. 4-6. F. '05. Comment. Harper's Weekly. 49:238. F. 18. '05.

Arena. 33:142-6. F. '05. Impunity of divorce suppression. Theodore Schroeder.

Arena. 33:302-6. Mr. '05. Divorce problem. Henry Gaines Hawn. (ed)

Arena. 33:413-14. Ap. '05. Is Austria a forerunner or a backward step? Kate Richards O'Hare.

Arena. 33:544-7. My. '05. Professor Gilding's defence of divorce. (ed)

Arena. 34:105-12. Ag. '05. Divorce question; a lawyer's view. Ernest Dale Owen. (ed)

Atlantic Monthly. 61:245-51, 330-42, 520-32, 680-91. F.-My. '88. Marriage ceremonies. Frank Gaylord Cook.

Marriage ceremonies in Europe, in the colonies, in the United States, and views on the institution of marriage.

Atlantic Monthly. 105: 295-7. Mr. 10. Change in the feminine ideal. Margaret Deland.

Atlantic Monthly. 108: 145-61. Ag. '11. Long inheritance. Cornelia A. P. Comer. (ad)
Story of a woman who renounced divorce.

Atlantic Monthly. 115: 173-85. F. '15. Family and the individual: a French view. Henry Bordeaux.

Atlantic Monthly. 118: 586-99. N. '16. Some notes on marriage. W. L. George.

*Atlantic Monthly. 130: 449-55. O. '22. Open door in marriage. Anne C. E. Allinson. (ad)

Atlantic Monthly. 132: 297-307. S. '23. What is marriage? A. Maude Royden. (fd)
Discusses conditions in England.

Atlantic Monthly. 132: 460-70. O. '23. Divorce. Katharine Fullerton Gerould. (fd)

Atlantic Monthly. 132: 623-7. N. '23. Marriage, a selective process. Richard Boardman.

*Atlantic Monthly. 133: 194-6. F. '24. Will to love: a postscript to a discussion of divorce. Elizabeth C. Adams.

Atlantic Monthly. 134: 155-62. Ag. '24. Shall I divorce my wife? Burnham Hall.

Biblical World. 29: 121-7, 191-200. F.-Mr. '07. Biblical teaching concerning divorce. Ernest D. Burton.
Old Testament teaching and Jewish usage; New Testament teaching.

Biblical World. 45: 18-22. Ja. '15. Divorce and remarriage in the teaching of Jesus. Shirley Jackson Case.

Bibliotheca Sacra. 67: 143-55. Ja. '10. Our Lord's teaching on marriage and divorce. Randolph H. McKim.

Case and Comment. 20: 332-4. O. '13. Divorce by consent. T. F. McCue. (fd)

Case and Comment. 21: 3-55. Je. '14. Marriage and divorce. Walter George Smith and others.

Catholic Mind. 21: 570-9. O. 8, '21. Plot against marriage. Ernest R. Hull. (ad)

Catholic World. 94:467-82. Ja. '12. Marriage and George Bernard Shaw. Thomas J. Gerrard. (ad)

Catholic World. 97:1-15. Ap. '13. English royal commission on divorce. W. H. Kent.

*Century. 78:145-52. My. '09. Argument against divorce. James Cardinal Gibbons; Significance of increasing divorce. Edward Alsworth Ross.

Church Quarterly Review. 92:209-35. Jl. '21. Divorce. Arthur C. Headlam. (ad)

Collier's. 68:14. Jl. 2, '21. But what about your home?

Collier's. 75:53+. Ag. 23, '24. What makes a happy marriage? Marion Foster Wotherspoon.
A glance at forty-four marriages.

Congressional Record. 62:8932-6. Je. 19, '22. United States leads the world in divorce. J. E. Ransdell. (ad)

Contemporary Review. 88:397-410. S. '05. Evolutionary ethics of marriage and divorce. Woods Hutchinson. (fd)
Same. Living Age. 247:195-206. O. 28, '05. Exerpt. Review of Reviews. 32:500-1. O. '05.

Contemporary Review. 99:733-9. Je. '11. Sincerity in social life. Lucy Re-Bartlett.
Same condensed. Review of Reviews. 44:115-16. Jl. '11.

Contemporary Review. 113:334-40. Mr. '18. Sir A. Conan Doyle and divorce reform. H. W. Bliss. (ad)

Contemporary Review. 117:571-88. Ap. '20. Soviet law of marriage and the family; text.
Condensed: Current History Magazine, New York Times. 12:533-4. Je. '20.

*Craftsman. 21:473-81. F. '12. Education as a preventive of divorce. Marguerite O. B. Wilkinson.

Critic. 46:209-11. Mr. '05. Views of wife and mother on divorce and remarriage. (ad)

*Current History Magazine, New York Times. 14:816-21. Ag. '21. Rapid increase of divorce. Gustavus Myers.

Current History Magazine, New York Times. 18:748-52. Ag. '23. Divorce and remarriage, or the family? Howard Chandler Robbins. (ad)

Current History Magazine, New York Times. 19: 590-5. Ja. '24. Family at the parting of the ways. Charles Franklin Thwing.

Current History Magazine, New York Times. 20: 639-40. Jl. '24. Scotland's easy divorce system. John Burns.

Current Literature. 48: 58-61. Ja. '10. Most difficult problem of modern civilization.

Current Literature. 53: 436-7. O. '12. Modernization of marriage. (fd)

Professor Barnes' advocacy of free divorce.

Current Opinion. 56: 132-3. F. '14. Woman's growing revolt against coercive marriage.

Delineator. 80: 133-4. S. '12. It takes two to make a divorce. John J. Freschi.

Difference in moral standards as a cause of divorce.

Delineator. 94: 1. Je. '19. Which? The bride: a liability or an asset? Corinne Lowe.

Some pictures of married life.

Delineator. 101: 3-4. N. '22. When marriage goes on the rocks; the share of husband and wife in domestic shipwreck. Alexander Brough.

Observations from the domestic court of New York City.

Discovery. 5: 81-2. Je. '24. Marriage and medical examination. M. B.

Edinburgh Review. 217: 1-20. Ja. '13. Marriage, divorce and the divorce commission.

English Review. 29: 151-5. Ag. '19. Divorce and decency. Demos.

England.

English Review. 36: 473-9. My. '23. Youth and marriage. Vero W. Garratt.

Holds social hindrances responsible for decline of social morality.

Expositor. 16: 361-6. N. '18. Earliest interpretations of our Lord's teaching on divorce. Harold Smith.

Fortnightly Review. 94: 487-96. S. '10. Divorce for the poor. Stephen Reynolds.

Fortnightly Review. 94: 617-28. O. '10. Profaned sacrament. Maurice Hewlett.

Fortnightly Review. 114: 141-53. Jl. '20. Divorce reform. Alfred Fellows.
England.
Forum. 45: 68-79. Ja. '11. Problem of divorce. Rheta Childe Dorr.
*Forum. 48: 188-204. Ag. '12. Problems of marriage and divorce. Anna Garlin Spencer.
Forum. 54: 641-60. D. '15. Our incestuous marriage.
Forum. 62: 48-59. Jl. '19. Divorce conflict. Delancey Knox.
Good Housekeeping. 64: 33-44. Mr. '17. Matrimony and the law. Samuel Scoville, Jr.
Good Housekeeping. 77: 84. S. '23. Putting it up to mother. C. S. Littledale.
Harper's Bazaar. 47: 110-11+. Mr. '13. Autobiography of a divorced woman. (fd)
Harper's Weekly. 55: 18-19. Jl. 29, '11. Why marriage ties are rent. John J. Freschi.
Harper's Weekly. 58: 14-15. O. 4, '13. Marriage today and tomorrow. Anna Garlin Spencer.
Harper's Weekly. 58: 13-15. Mr. 14, '14. Right grounds for divorce. Mary Austin. (fd)
Harvard Law Review. 30: 124-40. D. '16. Some phases of the law of marriage. Albert Swindlehurst.
Harvard Law Review. 32: 473-88. Mr. '19. Marriage by proxy and the conflict of laws. Ernest G. Lorenzen.
Hearst's Magazine. 21: 2392-2403. Je. '12. How shall we solve the divorce problem? Symposium.
Hearst's Magazine. 22: 70-7, 94-100. Jl. '12. New woman and the old. G. Ferrero; Divorce versus democracy. G. K. Chesterton.
Hibbert Journal. 9: 797-809. Jl. '11. American family. Charles F. Thwing.
Same. Living Age. 270: 451-8. Ag. 19, '11.
*Hibbert Journal. 22: 20-43. O. '23. Permanence or impermanence of marriage. Felix Adler.
*Homiletic Review. 63: 76-7. Ja. '12. Ministers and divorce. J. W. Morgan.
Condensed: Literary Digest. 44: 73-4. Ja. 13, '12.

Homiletic Review. 85:485-91. Je. '23. Marriage, divorce, and the church. J. A. MacCallum. (fd)

Illustrated World. 38:185-8. O. '22. Who's to blame for divorce. Mark H. Revell.

Independent. 52:1270, 2817-8. My. 24, N. 22, '00. Forbidding to remarry.

Independent. 69:1452-5. D. 29, '10. Minister's attitude toward divorce. William E. Barton. (fd)

Independent. 74:558-9. Mr. 13, '13. For restraint of marriage.

Inter-racial marriage.

Independent. 74:1170-1. My. 29, '13. Early marriage.

International. 3:75-82. S. '08. Future of marriage. Rodolphe Broda.

International Journal of Ethics. 19:443-65. Jl. '09. Problems of marriage and divorce. Anna Garlin Spencer.

*International Journal of Ethics. 26:443-61. Jl. '16. Marriage and the population question. Bertrand Russell.

International Journal of Ethics. 30:196-212. Ja. '20. Having right and being right. Juliet Everts Robb.

Irish Monthly. 52:230-5. My. '24. Italy and divorce. J. E. Canavan. (ad)

Journal of the American Institute of Criminal Law and Criminology. 10:409-22. N. '19. Social aspects of the family court. Charles W. Hoffman.

Journal of Applied Sociology. 7:99-108. Ja. '23. Matrimonial barometer in times of war and peace. George Elliott Howard.

Journal of Criminal Law. 12:566-76. F. '22. Extension of probation to adult cases, including divorce. C. W. Hoffman.

Journal of Social Forces. 2:702-5. S. '24. Preacher's right to marry. Frederick E. Lumley.

Journal of Social Hygiene. 10:257-67. My. '24. Companionate and the family. M. M. Knight.

Reply with rejoinder. Journal of Social Hygiene. 10:440-4. O. '24.

Juridical Review. 28:370-88. '16. Facts and fictions about divorce. F. P. Walton.

Ladies' Home Journal. 27:21-2. O. 1; '10. How can we check the increasing divorce? George Elliott Howard.

Ladies' Home Journal. 29:21. Je. '12. Why is there so much divorce?

Ladies' Home Journal. 30:10+. Mr. '13. As I see the way out of divorce. J. Gibbons. (ad)

Suggests taboo of divorced persons, refusal of clergymen to solemnize remarriages, and reestablishing of understanding through domestic relations courts.

Ladies' Home Journal. 30:8. Ap. '13. Why divorces are fewer among the Jews. Emil G. Hirsch.

Ladies' Home Journal. 42:20. Ja. '25. Masterless wives and divorce. Ruth Scott Miller.

Law Quarterly Review. 33:335-41. O. '17. Separation and divorce. Malcolm McIlwraith.

Summary of arguments made in the French legislature.

Literary Digest. 60:52. Mr. 29, '19. Japan, the land of quick and easy divorces.

Literary Digest. 66:116-19. S. 18, '20. Failure of divorce. (ad)

Review of Superstition of divorce, by G. K. Chesterton.

Literary Digest. 69:28-9. My 7, '21. America leading the world in divorces.

Literary Digest. 74:40. Jl. 1, '22. Ridiculing marriage to death.

Literary Digest. 76:36. F. 17, '23. Is marriage breaking down?

Literary Digest. 79:34. O. 13, '23. Ashes on the hearth.

Living Age. 267:879-82. D. 31, '10. Christianity and divorce. (ad)

Living Age. 281:248-51. Ap. '25, '14. Assault on marriage. C. Sheridan Jones. (ad)

Living Age. 282:675-7. S. 12, '14. France and easy divorce. Mrs. Belloc Lowndes.

Living Age. 297:436-9, 492-5. My. 18-25, '18. Superstition of divorce. G. K. Chesterton.

Living Age. 304:720-3. Mr. 20, '20. Mr. Chesterton's book on divorce.

McClure's Magazine. 46:16-18. Mr. '16. Easy alimony. Anna Steese Richardson.

McClure's Magazine. 47:14-15. My. '16. Am I my husband's keeper? Anna Steese Richardson.

Nation. 110:563-5. Ap. 24, '20. Marriage and divorce in Denmark.
Summary of the new Danish marriage law.

Nation. 110:640. My. 15, '20. They shall not pass.
Editorial on the English and Swedish divorce bills.

Nation. 118:671-3. Je. 11, '24. Toward monogamy. Charlotte Perkins Gilman.

Nation. 119:187-9. Ag. 20, '24. Modern marriage and ancient laws. Arthur Garfield Hays.

New Church Review. 26:99-111. Ja. '19. Marriage and divorce. James Everett Young.

New Republic. 9:124-6. D. 2, '16. Middleman in divorce. Manuel Levine and Raymond Moley.
Need of a conciliatory agency before cases are brought into court. Reply: Defending divorce lawyers. Alanson A. Hull. New Republic. 9:216. D. 23, '16.

New York Times. Sec. 8, p. 1. My 1, '21. Is marriage worth saving? William Hall Moreland.
Divorce statistics.

Nineteenth Century. 68:686-702. O. '10. Marriage, divorce and eugenics. Montague Crackanthorpe.

Nineteenth Century. 69:329-34. F. '11. Woman's view of divorce. E. B. Harrison. (ad)
Same. Living Age. 268:579-83. Mr. 11, '11.

Nineteenth Century. 72:1085-1102, 1103-13. D. '12. Problem of marriage and divorce: the church and the report of the Royal commission. J. E. C. Weldon; Problem of marriage and divorce: the passing of marriage. W. S. Lilly.

Nineteenth Century. 89:849-52. My. '21. Christian tradition of divorce. T. A. Lacey.
A suggestion for reform of divorce laws in England, in the light of the experience of the Christian church.

North American Review. 130: 547-64. Je. '80. Divorces in New England. Nathan Allen.

North American Review. 139: 234-45. S. '84. Need of liberal divorce laws. Elizabeth Cady Stanton.

North American Review. 149: 513-38. N. '89. Is divorce wrong? Samuel W. Dike, James Cardinal Gibbons, Henry C. Potter, and Robert G. Ingersoll.

North American Review. 149: 641-52. D. '89. Question of divorce. W. E. Gladstone, J. P. Bradley, and J. N. Dolph.

North American Review. 150: 110-35. Ja. '90. Women's views on divorce. Mary A. Livermore, Amelia E. Barr, Rose Terry Cooke, Elizabeth Stuart Phelps, and Jennie June.

North American Review. 180: 513-22. Ap. '05. Remarriage after divorce. William Croswell Doane.

Inconsistency of the Catholic Church. Summary: Harper's Weekly. 49: 748. My. 27, '05. Catholic theory of divorce. Reply: American Catholic Quarterly. 30: 345-57. Ap. '05. T. Barrett; Catholic World. 81: 287-306. Je. '05. J: T. Creagh.

North American Review. 180: 764-73. My. '05. Impediments to marriage in the Catholic Church. P. J. Haynes.

North American Review. 181: 123-33. Jl. '05. Marriage and divorce. Elizabeth Carpenter. (fd)

North American Review. 181: 597-602. O. '05. Marriage and divorce: the letter of the law. Norma W. Jones. (fd)

Pearson's Magazine. 22: 711-18. D. '09. Alarming changes in American homes. Allan L. Benson.

Quarterly Review. 218: 230-54. Ja. '13. Majority report of the divorce commission.

Scientific Monthly. 17: 427-34. N. '23. Marriage of kin. Paul Popenoe.

Social Hygiene. 4: 476. O. '18. Unsatisfied valence of marriage. C. V. Roman.

Spectator. 131: 890-1. D. 8, '23. Reform of the marriage laws. Lord Buckmaster. (fd)

Survey. 24: 886-9. S. 24, '10. Instability of the family as a cause of child dependence and delinquency. Charles A. Ellwood.

Survey. 47:47-8. O. 8, '21. Marriage and maternity in new Russia. Hans Niedermair.

Survey. 47:759-60. F. 11, '22. My first five divorces. By a Philadelphia lawyer. (fd)

Survey. 48:49-50. Ap. 8, '22. Divorce in Denmark.

Survey. 48:616. Ag. 15, '22. Marriage in Sweden. Irma C. Lonegren.

Westminster Review. 179:193-8 F. '13. Marriage and divorce. Frank D. W. Bates. (fd)

Westminster Review. 180:223-6. Ag. '13. Marriage, divorce and immorality. Edward J. Menge.

Woman's Home Companion. 43:8. My. '16. Incompatability, your honor. John J. Freschi.

Woman's Home Companion. 43:20. Jl. '16. Why we are not divorced.

Woman's Home Companion. 51:29. My. '24. I did not believe in divorce.

Woman's Home Companion. 52:24. Ja. '25. Divorce, as it looks to the man who grants it. Joseph Morschauser. (ad)

World To-Day. 21:1202-5. O. '11. Plea for freer divorce. M. F. Sinclair. (fd)

World Tomorrow. 6:105-8. Ap. '23. Divorce: three views. Ruth Hale, H. C. Robbins, and A. M. Royden.

World's Work. 25:251-2. Ja. '13. Sensible divorce law. Recommendations of the Royal commission on divorce and matrimonial causes in England.

World's Work. 47:27-8. N. '23. Domestic relations decalogue.

Yale Law Journal. 22:531-44. My. '13. Divorce in England, the United States and Canada. F. P. Walton.

Yale Review. n.s. 13:249-74. Ja. '24. Modern Marriage. William Graham Sumner.

Yale Review. n.s. 13:766-73. Jl. '24. Locking the barn door. Laura Woolsey Lord Scales.

Uniform Marriage and Divorce Law

General References

Books, Pamphlets and Documents

American Bar Association. Report. 11: 307-21. Report as to legislation regarding marriage and divorce. 1888.

Bossard, Jay Carver. Law, practice and procedure in divorce as applied in Pennsylvania. 337p. Clark Boardman Co., Ltd. New York. 1922.

Bres, Rose Falls. Maids, wives and widows. *In* Marriage and divorce. p. 54-73. E. P. Dutton & Co. New York. 1918.

Brookings. Walter Du Bois, and Ringwalt, Ralph Curtis. Federal control of divorce. *In* Briefs for debate. p. 142-4. Longmans, Green & Co. New York.

Carpenter, Oliver Clinton. Uniform divorce laws. *In* Debate outlines on public questions. p. 144-8. Mail and Express Pub. co., 9-15 Murray St. New York. 1924.

Brief and bibliography.

Davenport, Charles B. State laws limiting marriage selection, examined in the light of eugenics. 66p. Bul. 9. Eugenics Record Office. Cold Spring Harbor, Long Island, New York. June, 1913.

Donovan, Joseph Mitchell. Law of marriage, annulment, domicile, divorce. 100p. The author. Sioux Falls, S.D. 1912.

Ellwood, Charles A. Divorce problem. *In* Call of the new south. James E. McCulloch. p. 229-40. Southern Sociological Congress. Nashville. 1912.

Galbraith, Anna M. Family and the new democracy. 388p. W. B. Saunders Co. Philadelphia. 1920.

Especially marriage and divorce laws in primitive society and ancient civilizations; Various aspects of the modern divorce problem. p. 30-70.

George, Charles E. Modernization of marriage; Smith, Oscar J. Divorce. 60p. Lawyers and Bankers Corp. San Francisco. 1913.

Second article includes historical summary and summaries of the laws of foreign countries and of the states.

Governors' Conference. Proceedings. 1912: 155-73. Uniformity of marriage and divorce laws. Tasker Lowndes Oddie; J. H. Hawley.

Discussion. p. 197-209.

Hall, Fred and Brooke, Elizabeth W. American marriage laws in their social aspects: a digest. 132p. Russell Sage Foundation. New York. 1919.

Proposed reforms summarized; Laws by topics; Laws by states.

*Hawley, James H. Uniformity of marriage and divorce laws. *In* Governors' Conference. Proceedings, 1912. p. 162-73.

Keezer, Frank H. Treatise on the law of marriage and divorce, with synopsis of the marriage and divorce statutes of all states and containing complete forms for all purposes. 1079p. Bobbs-Merrill Co. Indianapolis. 1923.

Laws of American Divorce, by a Lawyer. 154p. M. Kennerly. New York. 1912.

*Livy, Milton Ives. Marriage and divorce. 63p. The Author, 922 Woolworth Building. New York. May, 1924.

Includes concise statement of laws of states and territories on marriage and divorce.

National Conference of Charities and Correction. 1901: 200-3. Recent attempts at restrictive marriage legislation. A. C. Rogers.

National Conference of Social Work. 1919: 379-82. Administration of marriage laws in Michigan. S. A. Brown; Marriage laws and their administration in Massachusetts. C. C. Carstens.

National Congress on Uniform Divorce Laws. Address, resolutions, uniform law relating to annulment of

marriage and divorce, and laws relating to return of statistics adopted by the National Congress on uniform divorce laws, Feb. 19-23, 1906 and Nov. 13-14, 1906. 27p. Harrisburg, Pa. 1907?

National Congress on Uniform Divorce Laws. Proceedings, 1906. 228p. Harrisburg Pub. Co. Harrisburg, Pa. 1906.

Also: Proceedings of the adjourned meeting, Nov. 13, 1906. 160p. 1907.

Ommen, Alfred E. Marriage and divorce in their relation to the public welfare. 23p. New York. 1911. (fd)

Address delivered before the Society of Medical Jurisprudence at the Academy of Medicine, New York, Jan. 9, 1911.

Pennsylvania. Legislative Reference Bureau. Compilation of laws relating to marriage and divorce, compiled by C. C. Breisch, R. S. Frey, and B. R. Glidden. 63p. Bull. No. 22. Harrisburg, Pa. Nov. 1, 1921.

Public Affairs Information Service. Consult current files for recent laws and proposed legislation.

Renton, Alexander Wood, and Phillimore, George Grenville. Comparative law of marriage and divorce. 987p. Sweet and Maxwell, Ltd. London, 1910.

Rhode Island. Library. Legislative Reference Bureau. Right to remarry after divorce: a digest of the laws of the several states. G. M. Sherwood. Providence. 8p. Oct. 6, '23. typw. Public Affairs Information Service. New York. 90c.

Ringwalt, Ralph Curtis. Federal divorce law. *In* Briefs on public questions. p. 194-201. New York. 1905.

Contains bibliography.

Snyder, William L. Geography of marriage; or, Legal perplexities of wedlock in the United States. 334p. Putnam. New York. 1889.

Southern Sociological Congress. Democracy in earnest. 1918. p. 107-13. Marriage health certificate. Oscar Dowling.

Stimson, Frederic Jesup. Sex legislation, marriage and divorce. *In* Popular law making. p. 317-38. Scribner. New York. 1910

Stratton, Lilyan. Reno; a book of short stories and information. 268p. Colyer Printing Co. Newark. 1921.

Sturgeon, Harold McCuan. Pennsylvania law and procedure in divorce. 687p. George T. Bisel Co. Philadelphia. 1923.

United States. House. Committee on the Judiciary. Uniform marriage and divorce laws. Hearings on H.J. Res. 75 and H.J. Res. 108. 25p. Serial 11. Jan. 13, 1920.

United States. Treasury Department. Digest of the law relating to common law marriage in the states, territories, and dependencies of the United States. Doc. No. 2834. 54p. 1919.

*Virginia State Bar Association Reports. 1922: 168-80. History and philosophy of marriage and divorce, with deductions therefrom, legal and patriotic. A. W. Wallace.

Willcox, Walter Francis. Divorce problem. 74p. Columbia University Studies in History, Economics and Public Law. Vol. 1. No. 1. New York. 1891.

Pt. I. General statistics of divorce; Pt. II. Influence of legislation on divorce; Pt. III. Causes and remedy.

Periodicals

American Bar Association Journal. 9: 154-5. Mr. '23. South Carolina's unique marital status. S. M. Wolfe.

No divorce, and its legal complications.

American Bar Association Journal. 9: 429-30. Jl. '23. Eugenics and limitations of marriage. J. P. Chamberlain.

Same. Journal of Comparative Legislation. 5: 253-7. N. '23.

American Journal of Public Health. n.s. 5: 1139-45. N. 15. Marriage health certificate, a deeply rooted social problem; with discussion. Oscar Dowling.

American Journal of Sociology. 12: 398-416. N. '06. Marriage and divorce in North Dakota. John Lee Coulter.

American Law Review. 49:852-79; 50:270-7. N. '15, Mr. '16. Divorce and the Federal Constitution; discussion. Morton L. Lewis; F. M. Etheridge.

Discusses what state has jurisdiction for divorce, and what effect in the state where granted has the decree of divorce when neither party is domiciled within the state.

American Law Review. 51:407-26. My. '17. Impediments to marriage. Albert Swindlehurst.

American Law Review. 54:617-25. Jl. '20. Marriage and divorce. Charles A. Boston. (fd)

American Magazine. 66:442-51. S. '08. Shuffling families in Sioux Falls. George Fitch.

*American Sociological Society. Publications. 5:212-14. '11. Social control of the domestic relations. George Elliott Howard.

Same. American Journal of Sociology. 16:805-17. My. '11.

American Statistical Association Journal. 19:387-9. S. '24. United States divorce rates, 1922. W. F. Willcox.

American Statistical Association Quarterly. 14:483-5. Mr. '15. Proportion of American marriages ending in divorce. Walter F. Willcox.

Arena. 2:399-408. S. '90. Uniform marriage and divorce laws. Samuel W. Dike.

Arena. 37:85-6. Ja. '07. Uniform divorce laws. Frank Parsons.

*Bench and Bar. 43:20-31. Ja. '20. New York law on marriage and divorce. Charles A. Boston.

Also issued separately. 137p. The Author, 24 Broad St. New York.

Bookman. 47:525-37. Jl. '18. Federal power and the people. Henry Litchfield West.

Canadian Law Times. 30:975-84. D. '10. Divorce in Canada and in the United States: a contrast. F. P. Walton.

Canadian Magazine. 43:485-8. S. '14. New Brunswick divorce court. T. C. L. Ketchum.

Canadian Magazine. 45:14-16. My. '15. Law presupposes uniformity. S. T. Wood.

Catholic World. 70:673-82. F. '00. Marriage and divorce in their legal aspect. J. David Enright.

Central Law Journal. 57:444-9. D. 4, '03 Statutory restraints on the marriage of divorced persons. H. J. Whitmore.

Century Magazine. n.s. 1:411-20. Ja. '82. Increase of divorce.

Century Magazine. 102:637-8. Ag. '21. Damaged goods of divorce. G. Frank.

Collier's. 46:40. N. 12, '10. Against Reno divorces; New York refuses to recognize divorces granted under certain conditions in Nevada. A. Ruhl.

Collier's. 47:19-20. Jl. 1, '11. Reno and the rush for divorce. A. Ruhl.

Cornell Law Quarterly. 7:1-10. D. '21. Custody of children in divorce suits: the conflict of laws problem. Herbert F. Goodrich.

Cornell Law Quarterly. 7:132-43. F. '22. Constitutional law, divorce laws, legislative tendencies in modern divorce legislation. Barton Baker.

*Current History Magazine, New York Times. 16:294-9. My. '22. Is divorce a social menace? George L. Koehn.

*Current History Magazine, New York Times. 18:246-50. My. '23. America's need of a Federal marriage and divorce law. Mrs. Edward Franklin White.

*Current History Magazine, New York Times. 20:249-53. My. '24. Divorce laws of America and Europe. Nancy M. Schoonmaker.

Current Opinion. 73:580-1. N. '22. Divorce. (fd)

Current Opinion. 74:338-40. Mr. '23. Are changing conventions menacing the marriage institution?

Delinquent. 7:1-5. F. '17. Domestic relations court and divorce. Charles W. Hoffman.

Eclectic Magazine. 148:371-7. Ap. '07. Uniformity in divorce. Frank H. Richmond.

Eugenics Review. 13:407-12. Jl. '21. English and foreign divorce law in relation to mental disorder. W. G. H. Cook.

Eugenics Review. 16:117-28. Jl. '24. State certificate of marriage. R. A. Gibbons.
Paper read before the Eugenics Education Society, England. Suggests a state certificate for syphilis, gonorrhoea, tuberculosis, genuine poverty, and mental deficiency.

Eugenics Review. 16:177-82. O. '24. Marriage. Leonard Darwin.

*Everybody's Magazine. 33:341-7. S. '15. United States of matrimony. H. Gerald Chapin.

Family. 3:211-14. Ja. '23. Right to marry. Frederick E. Lumley.
The right to marry is not a "natural right."

*Family. 4:172-5. N. '23. Common law marriage. Otto E. Koegel.

Family. 5:14-16. Mr. '24. Marriage legislation, 1923; successful and unsuccessful. Joanna C. Colcord.

Fortnightly Review. 84:329-41. Ag. '05. Marriage and divorce in America. Sydney Brooks.
Same. Living Age. 246:579-88. S. 2, '05.

Forward. 1:6-12. Ja. '17. Marriage health certificates. Oscar Dowling.

Green Bag. 22:275-9. My. '10. Divorce legislation. Walter George Smith.
Uniform state act.

Green Bag. 22:387-91. Jl. '10. Uniform divorce legislation—a reply. E. DeForest Leach.

Harvard Law Review. 28:457-72. Mr. '15. Ex-parte divorce. Robert James Peaslee.

Independent. 54:2150-2. S. 4, '02. Uniform divorce legislation.

Independent. 61:465-6. Ag. 23, '06. Uniform divorce laws.

Independent. 61:1265-6. N. 29, '06. National congress on uniform divorce laws. Ernest W. Huffcut.

Independent. 66:714-15. Ap. 1, '09. Meddling with wedlock; forbidding marriage between white and yellow persons.

Institution Quarterly. 7:15-18. D. 31, '16. Illinois—divorce for insanity.

Institution Quarterly. 8:49-50. Je. 30, '17. Illinois—Marriage and divorce.

Journal of the American Institute of Criminal Law and Criminology. 5:364-70. S. '14. Marriage, sterilization and commitment laws aimed at decreasing mental deficiency. Jessie Spaulding Smith.
p. 370. Brief bibliography.

*Journal of Applied Sociology. 6:1-10. D. '21. Bad marriage and quick divorce. George Elliott Howard.

Journal of Social Forces. 2:388-92. Mr. '24. Variance between legal and natural causes for divorce. Ernest R. Mowrer.

*Journal of Social Hygiene. 8:287-305. Jl. '22. Young girl marriages in criminal and juvenile courts. Arthur W. Towne.

Journal of Social Hygiene. 10:117-18. F. '24. Restriction of American divorces in Paris.

Ladies' Home Journal. 23:17. S. '06. Roosevelt's views on a uniform divorce law.

Ladies' Home Journal. 27:19. S. 1, '10. How can we check the increasing divorce? Walter George Smith.
Uniform state laws.

*Ladies' Home Journal. 31:20+. Mr. '14. Man who is casting out divorce from Kansas City. Courtney Riley Cooper.

Ladies' Home Journal. 42:22. F. '25. Zip! Zing! decree! Divorce à la Françoise. Frederic F. Van de Water.

Law Notes. 15:165-7. D. '11. Federal control of divorce. T. J. Johnston.

Law Times. 147:285-6. Ag. 16, '19. Need of uniformity in divorce law.
The British Empire, with special reference to Canada.

Literary Digest. 48:52-3. Ja. 10, '14. Getting married in Wisconsin.
Criticisms of the Wisconsin eugenic marriage law.

Literary Digest. 48:1365. Je. 6, '14. Catholic war on divorce in Massachusetts.

Literary Digest. 76:54-8. Mr. 10, '23. Paris as rich America's divorce mill.

Living Age. 248:121-4. Ja. 13, '06. Forbidden marriages and international law. Alfred Fellows.

McClure's Magazine. 34:232-42. D. '09. Divorce and public welfare. George Elliott Howard.

Michigan Political Science Association. Publications. 1:55-77. Ap. '95. Incongruity of the divorce laws in the United States—a legal tangle. John C. Richberg.

New Republic. 31:109. Je. 21, '22. Is insanity a ground for divorce? Edward B. Adams. (fd)

North American Review. 139:30-41. Jl. '84. Marriage and divorce. Noah Davis.

North American Review. 190:296-307. S. '09. Divorce in America and England. Britannicus.

Open Court. 4:2560-3. O. 9, '90. Divorce evil. Samuel H. Wandell.

Outlook. 82:919-20. Ap. 28, '06. Divorce decision. Conflicting jurisdiction.

Outlook. 86:237-43, 287-93. Je. 1, 8, '07. Divorce in America. E. Ray Stevens.

Outlook. 98:899. Ag. 26, '11. Degrading marriages.

Outlook. 105:342-3. O. 18, '13. Eugenic marriage laws.

Outlook. 133:434-5. Mr. 7, '23. Can divorce be stabilized? Capper bill.

Pacific Review. 2:116-27. Je. '21. Race mixture in the United States. E. A. Hooton.

Popular Science Monthly. 83:518-19. N. '13. Legal limitations of marriage.

Public Affairs. 1:23. O. '23. Should there be a national marriage and divorce law? Pro and con.

Public Opinion. 8:103-6. N. 9, '89 Marriage and divorce: a symposium.

*Scribner's Magazine. 66:193-8. Ag. '19. Marriage and divorce. Robert Grant.

Social Hygiene. 1:9-14. D. '14. Can the law protect matrimony from disease? Edward L. Keyes, Jr.

Social Hygiene. 6:227-54. Ap. '20. Eugenic marriage laws of Wisconsin, Michigan, and Indiana. B. C. Roloff.

Solicitors Journal and Weekly Reporter. 67: 118-19. D. 2, '22. Uniform divorce law in the United States.

University of Pennsylvania Law Review. 65: 338-67. F. '17. Recent divorce legislation in Pennsylvania tested by Federal principles of jurisdiction. Wm. D. Crocker.

Washington Historical Quarterly. 5: 121-8. Ap. '14. Divorce in Washington. Ralph R. Knapp.

Westminster Review. 158: 199-209. Ag. '02. Insanity and marriage. Arthur W. Wilcox. (fd)

World's Work. 38: 247. Jl. '19. American divorce rate still increasing.

World's Work. 46: 19-21. My. '23. Marriage, divorce, and the Federal Constitution.

*World's Work. 48: 403-9, 519-24. Ag. S. '24. Habit of getting divorces. Rollin Lynde Hart.

Yale Law Journal. 17: 589-601. Je. '08. Migratory American divorces—their international status—is a central registry practicable? J. Arthur Barratt.

Yale Law Journal. 22: 96-113. D. '12. Unifying tendencies in American legislation. Ernst Freund.
Uniform divorce, marriage, p. 108-11.

Yale Law Journal. 25: 58-73. N. '15. Some phases of marriage law and legislation from a sanitary and eugenic standpoint.

Yale Law Journal. 26: 444-63. Ap. '17. Capacity and form of marriage in the conflict of laws. Thomas Baty.
International law.

Yale Law Journal. 27: 49-65. N. '17. Martimonial domicile. Herbert F. Goodrich.

Yale Review. n.s. 14: 223-38. Ja. '25. Marriage and divorce. Robert Grant.

Affirmative References

Books and Pamphlets

Farrell, John Lawrence. Divorce question; uniformity

in legislation. p. 385-421. New Era Print Co. Lancaster, Pa. 1901?

Reprinted from Phi Delta Phi brief.

Livy, Milton Ives. Divorce reform: an article on divorce and a proposed bill advocating a liberal, logical divorce reform in the state of New York. 30p. The Author, 1228 Woolworth Building. New York. 1922?

United States. House. Committee on the Judiciary. Constitutional amendment granting Congress power to establish uniform laws relating to marriage and divorce, hearing on H.J. Res. 83. 67th Cong., 2d Sess. Serial 24. 11p. Jan. 26, 1922.

United States. House. Committee on the Judiciary. Uniform laws as to marriage and divorce; hearings on H.J. Res. 187. 65th Cong., 2d Sess. 112p. Oct. 2, 1918.

*United States. Senate. Committee on the Judiciary. Marriage and divorce—amendment to the Constitution; hearing before a subcommittee on S.J. Res. 5. 68th Cong., 1st Sess. 28p. Jan. 11, 1924.

United States. Senate. Committee on the Judiciary. Marriage and divorce—amendment to the Constitution of the United States; hearing on S.J. Res. 31. 67th Cong., 1st Sess. 22p. Nov. 1, 1921.

Periodicals

*American Bar Association Journal. 8: 181-3. Mr. '22. Uniform state laws. George B. Young.

Biblical World. 43: 33-43. Ja. '14. Divorce and social welfare. Edwin Heyl Delk.

Canada Law Journal. 56: 124-34. Ap. '20. Need of uniformity in divorce. N. B. Gash.

Argues for a general law on marriage and divorce in Canada.

*Central Law Journal. 70: 93-9. F. 4, '10. Shall Congress be given power to establish uniform laws upon the subject of divorce among the states of the union? Jennings C. Wise.

Refutes three arguments against unification of divorce laws.

Congressional Record. 23:790-3. F. 3, '92. Marriage and divorce. James H. Kyle.
Current Opinion. 74:471-2. Ap. '23. Federal legislation urged to meet our marriage crisis.
Forum. 2:429-38. Ja. '87. National divorce legislation. Edmund H. Bennett.
Forum. 13:541-53. Jl. '92. Necessity for uniform state laws. James F. Colby.
Good Housekeeping. 73:42-3+. S. '21. Call to a new crusade. R. Grant.
Harper's Weekly. 45:573. Je. 8, '11. Divorce and marriage. R. W. Tayler.
Illinois. Marriage and Divorce Commission. Divorce evil and some remedies. 8p. Chicago. 1913.
*Journal of Social Hygiene. 9:170-3. Mr. '23. Uniform divorce bill.
Ladies' Home Journal. 38:30. Ja. '21. Twentieth amendment. E. Jean N. Penfield.
Medico-Legal Journal. 15:229-39. '97. Needed revision of the laws of marriage and divorce in the United States. R. W. Shufeldt.
Nation. 36:418-19. My. 17, '83. Fraud in divorce.
Nation. 56:60-1. Ja. 26, '93. Divorce in South Dakota.
New Englander. 43:48-66. Ja. '84. Easy divorce: its causes and evils. I. E. Dwinell.
New Republic. 9:170-2. D. 16, '16. Failure of the states.
North American Review. 157:11-17. Jl. '93. Divorce made easy. Samuel J. Brun.
North American Review. 183:70-81. Jl. '06. American divorce law. Wilbur Larremore.
Pictorial Review. 24:5+. O. '22. Better marriage laws. Symposium. Genevieve Parkhurst and others.
Pictorial Review. 24:2+. N. '22. Forty-nine marriage laws, no two alike. Genevieve Parkhurst.
Condensed. Literary Digest. 75:34. N. 11, '22.
Popular Science Monthly. 23:224-37. Je. '83. Our marriage and divorce laws. Gordon A. Stewart.

Public Opinion. 20: 397-8. Mr. 26, '96. National divorce law. Samuel W. Dike.

Unpopular Review. 3: 61-75. Ja. '15. Our chaotic divorce laws.

A story of one man's entanglement with the laws.

Woman Citizen. 7: 11, 30. Ap. 7, '23. Thoughts on divorce. Bessie Lynch Williams.

Negative References

Books and Pamphlets

Foote, Edward B. Divorce: a review of the subject from a scientific standpoint. 60p. Murray Hill Pub. Co. New York. 1884.

A reply to the New England divorce reform league.

United States. House. Committee on the Judiciary. Marriage and divorce, adverse report. 52d Cong., 1st Sess. H.R. 1290. May 5, 1892.

Periodicals

Bench and Bar. 26: 87-94. S. '11. Agitation for reform of divorce laws.

Evils resulting from the present condition of the laws.

Bibliotheca Sacra. 69: 136-41. Ja. '12. Do we want a uniform divorce law; or what is the remedy. Ralph E. Prime.

*Bibliotheca Sacra. 69: 242-68. Ap. '12. Divorce problem: a rational religious view. Charles Caverno.

Case and Comment. 17: 17-19. Je. '10. Uniform divorce legislation. Henry C. Spurr.

Evils arising from administration would not disappear under uniform national divorce law.

*Case and Comment. 21: 3-6. Je. '14. Ethics of divorce reform. Walter George Smith.

Collier's. 46: 40-2. N. 12, '10. Against Reno divorces. Arthur Ruhl.

Craftsman. 19: 1-8. O. '10. Possibilities of the house of governors. William George Jordan.

*Editorial Review. 5: 1081-4. D. '11. Divorce and the means of diminishing it. George W. Norris.

Forum. 8:349-64. D. '89. Divorce in the United States. E. J. Phelps.
Forum. 10:115-23. S. '90. Matrimony and the state. M. J. Savage.
*Freeman. 7:150-1. Ap. 25, '23. Question of divorce.
Green Bag. 22:387-91. Jl. '10. Uniform divorce legislation. E. DeForest Leach.
Harper's Weekly. 47:1657. O. 17, '03 Our chaotic divorce laws.
Suggests a practical improvement of laws, rather than uniformity.
*Independent. 86:161. My 1, '16. Divorce evil
Literary Digest. 70:30. Jl. 9, '21. How marriage can be saved.
Exerpts from Rev. William Hall Moreland's article in the New York Times.
McClure's Magazine. 34:232-42. D. '09. Divorce and public welfare. George Elliott Howard.
North American Review. 144:429-31. Ap. '87. Uniform marriage and divorce laws. Thomas M. North.
Political Science Quarterly. 4:592-614. D. '89 Statistics of marriage and divorce. Samuel W. Dike.
Review of Reviews. 45:372-3. Mr. '12. Is a uniform divorce law necessary or desirable?
World's Work. 47:525-9. Mr. '24. Back to states' rights! A. C. Ritchie.

INTRODUCTION

The prevalence of divorce, shown by statistics to be increasing yearly, gives rise to conflicting reflexes of thought. First, is divorce justified at all? The ultra-conservatists say and have said in the past an emphatic "no," that marriage is a life-long condition, sacred to all that is deepest and purest and most lasting in human life. The ultra-liberalists have replied that marriage is merely a social convention to be assumed or discarded at will, as it conduces to the happiness and well-being of the two most directly concerned; that love, the supreme experience while it lasts, should be subserved by the bonds imposed by custom. Between these two extremes we have every shade of opinion.

Marriage and the family are the most fundamental of social institutions. Their traditions have been evolved from the earliest times of which we have extant knowledge. They are rooted in historical antiquity and dignified by age-long custom. Divorce, or its less extreme form, separation, have followed the marriage bond down the ages. The forms and limitations of both have been inherent social developments conforming to the codes and moralities of the time. Outside of the bare struggle for existence, and there are many who would except even this, nothing in human life is so basic as the relationship of two human beings to one another, or their relationship to their spiritual source, by whatever name they may know it. Nowhere do right thought, right standards, right ideals, right relations matter so much in the ultimate happiness or failure of life.

Although marriage has its special problems more or less important to social well-being, it is the divorce problem that arouses most discussion. First of all its alarming, and in our experience, unprecedented, growth.

It was little known in the early period of our republic, and up to the middle of last century apparently attracted little attention. By 1881 the growing concern in the reform of both marriage and divorce resulted in the organization, under the leadership of the Rev. Samuel W. Dike, of the New England Divorce Reform League, later to become the National League for the Protection of the Family. This league was especially concerned with the growing proportions of divorce which it believed might be reduced by uniform legislation. Through its influence a Federal census of marriage and divorce was authorized in 1887 for the twenty-year period 1867-1886. The findings of this census showed a total of 328,716 divorces. In 1902-1905 the subject was again brought to bear, supported by a special message of President Roosevelt to Congress, to have statistics brought up to date, and a second census was authorized for the additional twenty-year period of 1887-1906. The statistics for this period showed 945,625 divorces, an increase over the preceding period of 187 per cent. By ten-year periods the divorces were 122,121 for 1867-1876, 206,595 for 1877-1886, 352,263 for 1887-1896, and 593,363 for 1897-1906. In 1914 a third agitation for the collection of statistics was initiated by the International Committee for Marriage and Divorce, and resulted in the tabulation of statistics for the single year of 1916. For this year divorces to the number of 112,036 were reported. In 1922 statistics showed 148,815 divorces, and in 1923 165,139 divorces. Marriage figures are not so complete, but according to the Census statistics there were estimated 12,832,044 marriages for 1887-1906, 1,040,778 marriages for 1916, 1,129,045 marriages for 1922, and 1,223,825 for 1923.

The second phase of the two problems which gives rise to thought is the inadequacies of the laws in one or another respect and the social effects that thereby develop. The predominating leniency of marriage laws,

for instance, is felt to be unfortunate where it permits the marriage of the extremely young. In the census of 1922, 1600 boys and 12,234 girls fifteen years of age were listed as widowed or divorced. There is the question also of the validity of marriages contracted outside the state in which both parties regularly reside, which several states do not recognize, of the placing of other safeguards, such as delay through better license and notification requirements, and of legislation concerned with unfit marriages in many forms. The easy divorces in some states, the permitted quick marriage, the manufacturing of evidence and the frauds perpetrated upon courts and injustices to men, women and children, are merely a few of the points in divorce arousing legislative and social interest.

The chaotic condition of state laws and the evasion and intricate relations not infrequently ensuing when state lines are crossed has led to the question of bringing about uniformity in the laws. As has been mentioned, uniformity was discussed in 1881. In 1906 the so-called Pennsylvania movement urging uniform law was initiated by the calling of the National Congress of Uniform Divorce Laws by the Governor of Pennsylvania. This congress drafted a uniform act as a model of what it was hoped to have adopted by the separate states. Down to the present time its ideals have been carried on by the American Bar Association through its National Conference of Commissioners on Uniform State Laws, which has steadfastly urged uniform laws and adopted statutes to be introduced into the state legislatures. Uniformity was also discussed at the 1913 Conference of Governors. With but a very few exceptions, however, the states have failed to support this movement and the conflicting views held in different sections of the country presage no early success. The states are on the whole making headway in the improvement of their several laws, but the changing of laws is far from implying a tendency

toward uniformity of standard or harmony of cooperation throughout the United States, and without uniformity it is felt that one of the greatest, if not the greatest, obstacles to adequate legislation cannot be overcome.

Growing out of attempted state uniformity has come the effort to place legislation in the national government, and as the jurisdiction of Congress is doubtful Federal legislation apparently can be secured only by an amendment to the Constitution. For a number of years resolutions and memorials have been introduced into Congress aiming at a national law. In the first session of the Sixty-fourth Congress, 1915, six resolutions for a uniform or national law were introduced, and in the first session of the Sixty-eighth Congress, December, 1923, eight resolutions. On January 23, 1923 a joint resolution S.J. Res. 273 and H.J. Res. 426 proposing an amendment to the Constitution was introduced by Senator Arthur Capper of Kansas, and Representative Fairfield of Indiana. This resolution was as follows:

> The Congress shall have power to make laws, which shall be uniform throughout the United States, on marriage and divorce, the legitimation of children, and the care and custody of children affected by annulment of marriage or by divorce.

The resolution was accompanied by a tentative bill S. 4394 drafted by Mrs. Edward Franklin White, deputy Attorney-General of Indiana and legislative chairman of the General Federation of Women's Clubs in America, and endorsed, among others, by the following six women's organizations: the General Federation of Women's Clubs, the National League of Women Voters, the National Federation of Business and Professional Women's Clubs, the Daughters of the American Revolution, National Congress of Mothers and Parent-Teachers Association, and the American Association of Home Economics. Under the proposed bill the marriageable age would be raised to eighteen for girls and twenty-one for boys, or to sixteen and eighteen with consent of parents;

marriage of the feeble-minded, of paupers, of those afflicted with incurable diseases, of epileptics, and of those within certain degrees of relationship would be forbidden, and a ten days' interval between application and issuance of a marriage license would be required, during which notice of the prospective marriage must be published, and two witnesses would be required to be present at every marriage ceremony. Its provisions would grant divorce upon grounds of adultery, desertion or failure to provide for a period of one year, cruel or inhuman treatment, both physical and mental, incurable insanity, and the commission of an infamous crime by either party; the custody of minor children would be vested in the mother if morally and mentally competent, and if for the best welfare of the children; in procedure a personal service of defendant would be required or if that is impossible the publication of summons, and in case of the non-appearance of defendant the court would appoint an assistant Attorney-General to appear for the state; divorce would be followed by an interlocutory decree for one year during which neither party might marry again. Enforcement would be in the courts of the several states, not in the Federal courts, thus obviating the disarrangement of existing machinery. The resolutions for amendment were re-introduced December 5 and 6, 1923, but not reported out of committee.

No study of marriage and divorce and no legislative program can ignore the questions arising as to the social causes for and the correctives of the increasing unrest and instability of family life and the home. To what extent are they due to legal loopholes and confusion and to what to natural social evolution and conditions inherent in the progression of life? In what degree have women's enlarged activities and opportunities been responsible for increased divorce, and in what degree have the two been merely concomitant movements of a deeper social change? Are materialism, selfishness, and the loss of religious standards at fault; the lack of

teaching of youth in the deeper ideals and responsibilities of marriage, the losing sight of the ancient ideal of duty, the throwing of men and women back upon the formulation of their individualist ideals of love and marriage with whatever adequate or inadequate ethical preparation they may have had for so momentous a decision, the crowding out of the finer spiritual feelings until only the shell of marriage has remained? How far are divorces due to a real disease in the social and political body, and how far are they due to conditions no deeper than lack of individual idiosyncracies and lack of adjustment, to youth, or to well- or ill-intentioned interference by others; how far is the new freedom deteriorating or raising national standards? These, and many more questions come to mind.

To answer these and other questions clearly and concisely, to arrive at an understanding as to what standards and ideals are in consonance with the best thought of the age, would be a far step in the advancement of these important problems that are claiming the thought of some of our most earnest social thinkers of the day.

JULIA E. JOHNSEN

MARRIAGE AND DIVORCE

ORIGIN OF DIVORCE[1]

Divorce is a social phenomenon. As the counterpart of marriage, it cannot be considered apart from it. In seeking the origin of divorce, therefore, we pursue the method employed in the investigations relative to marriage. In the beginning of his masterful work on The History of Matrimonial Institutions, Professor Howard says: "Marriage is a product of social experience. Hence to understand its modern aspects it is needful to appeal to the general sociological facts surrounding its origin and its early history among the races of mankind." Only by treating the subject of divorce in the same way we shall be able to view its present aspects with intelligent comprehension. Marriage originated in the primitive relations of the sexes. In the natural-history-stage of human development, those relations are unregulated by institutions and ideas we commonly regard as natural. The sexes cohabit in a limited promiscuity. Human pairing often partakes of the transient nature exemplified among inferior creatures. Thus among both extant and extinct races, we find every degree of the duration of marriage from the single act of coition to the life-long union. Often the relation is so temporary as scarcely to deserve the name of marriage. Trial and time marriages not infrequently occur. Sometimes "Marriage is for a certain legally stipulated period which may vary from one hour to ninety-nine years." A glance at these facts show that "marital relations, like political

[1] From Divorce: a Study in Social Causation, by James P. Lichtenberger, Ph.D., Assistant Professor in Sociology, University of Pennsylvania. Columbia University Studies in History, Economics and Public Law. Volume 35, No. 3. p. 21-6. Columbia University. New York. 1909.

relations, have gradually evolved; that there did not at first exist those ideas and feelings, which among civilized nations give to marriage its sanctity."

Now it is in these same facts that we find the starting-point of our investigation. Precisely in the same sense in which these temporary and transient relations of the sexes, characteristic of peoples of low degrees of culture, constitute the beginnings of marriage, the subsequent and frequent termination of these marriages constitutes the origin of divorce. From this beginning, in loosely restricted individual action, the history of marriage and divorce reveals the interesting processes by which they have passed in civilized communities, under the strictest regulation of the united forces of social control.

In the pre-legal period, marriage is often without ceremony and is restricted only by social custom. The husband and wife unite as a matter of choice, and as freely separate. Marriage is a temporary convenience to be dissolved at the pleasure of either party. Where rude marriage ceremonies exist, they are seldom more than a symbol, indicating the beginning of domestic relations, such as eating together, sitting by the same fire, or performing jointly some household duty. As society advances in culture, more permanent social, legal, and political forms are evolved, and the institution of the family shares in the general improvement. Upon this subject, Mr. Spencer remarks: "Progress toward higher forms of social types is joined with progress toward higher types of domestic institutions," and in perfect agreement Westermarck declares: "There is abundant evidence that marriage has, upon the whole, become more durable in proportion as the human race has risen to higher degrees of cultivation, and that a certain amount of civilization is an essential condition of the formation of life-long unions." These generalizations are borne out by the facts of human progress. Very

early, customs arise regulating the duration of marriage with consequent forms and ceremonies upon entrance into the marriage state.

In harmony with general progress, the family assumes a more permanent character without reference to the form in which it exists, and with the increase of regulative customs and ceremonies regarding marriage, the conditions of separation become more restricted and more clearly defined and begin to assume the nature of formal divorce. At first it may be little more than a voluntary separation. When custom and law begin to require publicity, they also begin to establish the method of procedure. In the beginning it usually involves a symbolic act, which indicates the nature of the transaction, as the turning of the offending party out of doors or of the throwing out of clothes. Sometimes it is a mere proclamation before witnesses. Again it must be settled by a council, either of the friends of the married pair or of the tribe, or it may require the judicial action of the chief. By slow but well-defined processes, it passes over, in more highly-developed societies, to a trial by the court and the writing of a "Bill of Divorcement." Not, however, until we reach the stage of general culture, where the family becomes a permanent institution, with its ideal of life-long companionship, does divorce become a remedial measure for the readjustment of the legal and social status of those whose marriage relations have broken down.

It is natural, then, that we should find in the different stages of the development of rude societies, various conditions in respect to the right of the individual to divorce. On this subject Post gives a most interesting summary:

> In respect to divorce, the existing rights among different peoples of the earth, vary within the widest conceivable limits. There are cases in which the marriage tie may be dissolved at any time at the pleasure of either of the parties, and there are cases in which the relations are absolutely indissoluble.

Between these opposing extremes, are found all conceivable intermediate stages. Sometimes the man only has a one-sided right of divorce, and sometimes the woman only. Sometimes a marriage separation is admissible only upon specified grounds, and these grounds may be different for the woman than for the man, or they may be the same. The character of marriage among different peoples is the chief influence in shaping the form of divorce right. In a weakly developed family organization, or in one on the point of decay, marriage is on either hand easily dissoluble. Under the reign of rape and wife purchase, the right of the wife to divorce, is as a rule, very contracted, that of the husband is often very extensive. Under political organization, and under the family organized on the basis of parental rights, special grounds for divorce customarily develop, which, when the wife is the equal born life companion of the man, are commonly alike for both parties, while, where they do not stand on an equal footing the grounds for divorce for each party are different. Thus:

1. Sometimes marriage is such a loose relationship that it may be dissolved at any time at the discretion of either party.

2. Sometimes marriage is absolutely indissoluble: only death can separate the married pair.

3. Sometimes marriage can be dissolved only by the agreement of the parties, while there are no other reasons for the separation.

4. Sometimes the husband has the right to divorce the wife at his pleasure, or if reasons are required, the most trivial ones are sufficient.

5. Sometimes the wife has also the right to separate at her pleasure, or where reasons are required, they may be of a most trivial nature.

6. That marriage can be dissolved only upon specified grounds is a widespread rule and indeed, while these grounds often differ for men and women, they are often the same.

The frequency of early divorce depends upon the prevailing ideas concerning marriage. Where marriage is a voluntary relation of short duration, men and women marry and separate frequently in the course of a lifetime. This condition is frequently met within rude societies. Since an unmarried person in primitive society is a rare exception to the rule, the number of marriages and divorces is exceedingly high. As marriage grows to be a more permanent relation, death comes to terminate proportionately more marriages, and the number of divorces in proportion to marriages diminishes.

With the rise of marriage by capture and purchase, the wife becomes the chattel of her husband-owner, and divorce becomes his sole prerogative. He may do with her as he pleases. He is restrained, however, from the free exercise of his liberty by certain external considerations. Especially in case of purchase, there is always danger of blood-feud with his wife's tribesmen if his treatment is too severe. Economic reasons very early complicate matters. In the absence of more refined restraints, his regard for his wife as a species of property is of consequence. His interest in her ceases if he divorces her. He is furthermore likely to suffer the loss of the purchase-price paid for her, and may be compelled to return any property she may have brought to him at the time of her acquisition. Under further progress, where wife-purchase is replaced by the payment of the "bride-price" and the receipt of the "marriage portion," divorce is attended by still greater loss. Unless divorce is for grave reasons, the husband is usually required to restore the dower, and sometimes to turn over all or part of his property and not infrequently to suffer the loss of his children. Where the wife is accorded the privilege of leaving her husband, unless it be for serious offence on his part, she is usually required to leave behind her dower and her children. Difficulties of self-support and disabilities of sex, have always made the part of the wife more difficult and compelled her to endure much, rather than leave her husband.

Thus, as society arrives at a state of greater stability, the relation of the permanence of the family to that stability is perceived, and an intelligent conservatism in respect to divorce makes its appearance in many places. Property interests become an increasing factor in the stability of society, and marriage comes to rest less upon sexual instincts than upon economic conditions. Thus powerful influences are exerted to check the freedom of divorce and to increase the stability of the family.

MARRIAGE AND DIVORCE IN CHURCH AND STATE[1]

That beautiful sentiment of the Juris Consul of the Roman Empire, who defines marriage as "the life-long fellowship of all divine and human rights," expresses most truthfully the feelings of all enlightened people, while the law courts of the present day in substance define marriage to be a "civil status of one man and one woman legally united for life, with rights and duties which are, or from time to time, may thereafter be assigned by the laws of matrimony." Legal marriage is not a contract, as the old law writers claim, but it is a status growing out of a contract to marry. It differs materially from a contract in that it cannot be annulled by agreement; its rights and duties cannot be changed by the parties; an act of God incapacitating one of the parties will not release it. It is not dissolved by failure of original consideration, no suit for damages will lie on the non-fulfilment of its duties. State legislation may annul it at pleasure, the Supreme Court of the United States having decided that it is not a contract under the clause of the Federal Constitution which inhibits the states from impairing the obligation of contracts.

None of the elements are those of a contract, but all are of a status.

The sanctity of the marriage tie and all the blessings and virtues which cluster around it and appertain to it and make it a benediction to mankind, which no human legislation can bestow, demonstrates that while the laws of man regard it only as a civil status, the Almighty invested it with all the beatitudes of the beauty of holiness, which He and His teaching can alone inspire and sacredly guard. Laws may control the physical acts

[1] From address Historical Philosophy of Marriage and Divorce, by Judge A. W. Wallace, president of the Virginia Bar Association. Virginia State Bar Association. Reports. 1922: 168-89.

of mankind, and protect their legal rights, but human laws cannot create or control the affection and emotions, the sympathies and virtues of man and wife.

As well may a court of law attempt to regulate the winds of heaven, or to order back the advancing tide of the ocean, as to attempt to administer the love and the honor of God's holy state of matrimony.

Marriage then, is much more than a civil status and has always, whenever the rays of civilization have shone, been solemnized with a religious ceremony, save and except in two periods of history—one during the decline of the Roman Empire, a period of immorality and debauchery without a parallel in history; and the other, in France, where years of royal corruption resulted in a relentless revolution, when France awoke in wrath to reap vengeance in blood—a period of the most brutal butchery that ever blurred a nation's fame. I repeat, excepting those two periods, marriage has from the earliest dawn of civilization been solemnized with a religious ceremony. In Egypt, at least during the Ptolemaic period, the wedding is said to have been accompanied by a religious ceremony. Among the ancient Persians the betrothal was performed by a priest who joined the hands of the couple whilst reading prayer. In Greece marriage was generally though not always, contracted at divine altars, by oaths and the assistance of a priest. The Romans at the marriage of their patricians, made a sacrifice to the gods, and the couple were united with prayer and, except during the decadence of the empire, with all classes marriage was performed with a sacred ceremonial. Besides sacrifices and prayer, auspices formed a very important part of the Roman wedding, and if the gods were found opposed to the match, the nuptials were put off, or the match was abandoned. Even Cicero considered it wicked to marry without auspices; but later on, when indifference to the old faith increased, religious ceremonials became more and more uncommon among the Roman people till at the end of

the period of the pagan emperors, they were almost exceptional; being regarded as a matter of no significance. Christianity gave back to marriage its religious solemnity. The founder of the Christian Church had not prescribed any ceremony in connection with it, but in the earliest times the Christians of their own accord asked for the pastor's benediction.

The doctrine of the Church was gradually developed that marriage was a sacrament and so recognized universally as far back as the twelfth century. It was made an essentially religious ceremony by the Council of Trent in 1563, and it remained so, until the period when the wild frenzy of the people for the destruction of everything sacred, in the French Revolution attempted to divest it of its sanctity in the constitution of September 3, 1791.

Since then, civil marriage, implying a necessity of the Church union being sanctioned by secular authority has generally obtained in most European countries as well as our own, but such sanction is only a recognition of the still universally existing religious ceremony.

We trace back then, the ceremonial through the misty period of early history, way back to the legendary and poetic period as reflected in the Greek plays and poetry, and we see that even then marriage produced examples of the highest type of manhood and womanhood. "Moral ideals," says Mr. Lecky, "in a thousand forms have been sublimated, enlarged and changed by advancing civilization. But it may be fearlessly asserted that the types of human and marital excellence of the period I have referred to, while they are the earliest, are among the most perfect in the literature of mankind." The conjugal tenderness of Hector and Andromache, the unwearied fidelity of Penelope, awaiting through long revolving years, the return of her storm-tossed husband, who looked to her as the crown of all his labors, the heroic love of Alcestis, who voluntarily dying that her husband might live, all these are pictures of perennial

beauty which Rome and Christendom, chivalry and modern civilization have neither eclipsed nor transcended. Conjugal fidelity, the grace as well as the virtue of the most perfect manhood and womanhood have never been more exquisitely portrayed.

The law courts can have no jurisdiction over devotion that produces such heroism, and the fact that they cannot inspire, regulate or control it, proves that this marriage relation is something higher than a mere civil status.

Having shown the dual light in which marriage is regarded by Church and state and that the courts now recognize the original position of the Church—that marriage is a status and not a contract, the annulment or termination of the status is the next point for consideration.

The ceremonial has, from the remotest point of history and civilization, been recognized as relating a life-long condition, unless terminated by modes recognized as legal, and from as far back, at least, as the twelfth century and up to the middle of the nineteenth century, it could not be terminated or annulled without the special authority of the Church or its head, or by special legislative act.

Among the Greeks in the Homeric period, divorce seems to have been almost unknown, but afterward, when society became corrupt, when even vice was refined by culture and made the parent of art, divorce became an every day event.

In Roman law marriage was considered as a voluntary union, which might be terminated at any time by the consent of the parties, or at the behest of either party, but in the long period of Roman purity and virtue, such a thing as a man putting away his wife by divorce, or a woman asking for a divorce from her husband, was practically unknown. Although the legal right was recognized, it is said not to have been acted on for a period of five hundred and twenty years, Spurius Cervillius

being the first Roman to put away his wife, and morals were so severe that another senator was censured for indecency because he kissed his wife in the presence of their daughter.

With the decadence and the corruption of the Empire, a corruption with none of the glamour of Grecian refinement, came disregard for the sanctity of the marriage tie, and as in Greece, divorce became common and for such trivial causes, that it was thought necessary to attempt to restrict it by law, and in the early part of the sixth century, Justinian allowed it only in three cases. At a later period, Justinian enacted that persons dissolving a marriage by mutual consent, should forfeit all their property and be confined for life in a monastery, the monastery to receive one-third and the children of the marriage two-thirds of their property. This harsh legislation was afterward repealed in the next reign, but it shows the social state of a people that even suggested such an enactment. Subsequently Justinian settled the law of divorce, granting it to the husband for six causes and to the wife for five. The grounds for divorce specified in these statutes are an interesting commentary on contemporary morals and show that they were enacted purely with a view to public decorum. Finally after a contest through the centuries, Christianity triumphed in its control of divorce and from the date of the Council of Trent, marriage was declared indissoluble. The divorce law of the Church was the law of Europe without question until the Reformation, and practically until the date of the French Revolution, when divorce was allowed at will, and subsequently with limitation by the code of Napoleon.

RAPID INCREASE OF DIVORCE [1]

America's black spot is the divorce court; America's disease is divorce," said the Rev. Dr. Mark A. Matthews

[1] By Gustavus Myers. Current History Magazine, New York Times. 14: 816-21. August, 1921.

of Seattle, Wash., recently. Addressing a convention of the Episcopal Diocese of Long Island, on May 17, 1921, Bishop Frederick E. Burgess recounted how the fall of the Roman Empire was produced by the laxity and rottenness of the laws of marriage, and he commented, "This low standard of morality in Roman society would seem to be fast approaching in America."

These are only two of the many clergymen who have been trying to fix national attention upon what they consider our most serious social evil. The outcry against the enormously increasing divorce rate is not a sudden one, nor has it been confined to ministers. Many public men and women have uttered warnings of its growing enormity. In 1918 an important hearing on the subject was held by a committee of Congress, but the war absorbed public interest, and the facts and statements there produced received but little publicity. It was at that hearing that the Reverend (now Bishop) William T. Manning of Trinity Church, New York City, made this declaration:

> The happiness, the safety, the well-being of our nation depend directly upon the stability and well-being of our home. Now, there is one menace more than any other threatening the life of that institution, and that is the appalling increase of divorces. The menace of that, the danger of that, to the life of our nation, I believe we all feel. . . . It was true recently, and I believe it is true today, that the number of divorces, the proportion of divorces to marriage, is greater in our country than in any other country in the world that calls itself civilized.

Are such expressions of alarm impelled by casual or exceptional conditions? Is the huge divorce rate in the United States chronic, or has it, as in some countries, been largely brought about by extraordinary war dislocations?

In England and Germay the great war is authoritatively represented to have been responsible for a great impetus to divorce. A recent dispatch from England said that the courts were overcrowded with divorce cases, a chief cause of which was the loneliness of women during the long absence of

their husbands at the front. A cable from Berlin tells how Germany, not so long ago pluming herself as a country of solid domesticity, has become a land of divorce; statistics now show one divorce in every eight marriages, the majority of divorces being granted for breach of marriage vows. A judge of the leading divorce court in Berlin attributes the rush for divorces largely to war causes; he specifies how, during the war, there were many hasty marriages followed by the long separation demanded by army service; and how in the absence of husbands many wives living in a general atmosphere of wartime frivolity and immorality went recklessly to excesses. This judge verifies what many observers of German war methods suspected: that the unmorality of the German government was accompanied by a widespread breakdown of private morality. Among other ways in which this manifested itself, the judge says, was in "the shocking lack of moral restraints and the trend toward pleasure and luxury" shown by many women.

Such an explanation may be largely true of European countries engaged in a long, desperate war tending to displace all normal standards. But can it be applied to the United States? Our participation in the war was brief, and neither our national nor our private life can be said to have been disarranged. Moreover, there is the striking fact that, long before the war, divorces were steadily, ominously increasing, and that the process has been continuing uninterruptedly.

To trace the growth of divorce in the United States it is necessary to go far back. Some investigators, and illustrious ones at that, have, in their veneration of the past, been misled into thinking that divorce is a fairly modern American practice. Even Bancroft, the historian, wrote of New England: "Of divorce I have found no example." Bancroft was wholly mistaken. Had he carefully examined the records of the Massachusetts General Court during the Puritan régime he would have

found that a number of divorces were granted, mainly for desertion and bigamy, and that in settlement and colonial times some divorces were allowed in Connecticut and Rhode Island and others in New York.

In that era, however, and also for some decades after the Revolution, divorces were not numerous. European observers traveling in this country noted the remarkable sense of independence American women had, compared with European women. In many European countries divorces were forbidden or discouraged by church canons, and in such of those countries as allowed them, they were expensive to obtain. But in addition there was a state of mind on that part of European women in general which prevailed to a much less extent in America. So long as the husband did not complicate matters by desertion and non-support the European woman was inclined to overlook her spouse's lapses from virtue, and to a considerable degree this view is still evidenced in Europe. The American woman never tolerated this condoning. If poor and friendless, she would yield to the exigencies of the occasion and continue a union that she resented, for the one reason that there was no other course that she could follow. If well-to-do or rich, she would seek relief in separation. Divorce was then an unpleasant extreme because of the general standard of the times, which viewed it as disgraceful. Church influence also was strong, though not predominant, and its tendency was to regard sternly, even to the point of social ostracism, both those responsible for divorces and the divorcees themselves.

Two events, however, brought a great change in the attitude of many American women toward the problem of marriage and divorce. The entry of women into industry gave them opportunities for self-support; they were no longer wholly dependent, and had greater control over the question of whom and when they should marry. If, when married, they had good cause for sundering the tie, they could often return to their

industrial jobs. This, of course, was not conveniently practicable where there were young children, but, on the whole, the fact that many women had the opportunity to win their own living gave them a greater field of independent action.

In the "Woman's Rights" Era

The second event was the movement for woman's rights. Manhood suffrage had been generally gained in the United States by 1828, by which time laws restricting the right to vote to propertied men had been abolished. Immediately thereafter came the movement to establish woman's political and social rights. One of the pioneers of this was Frances E. Wright, who, in 1829 and 1830, gave a series of lectures in many American cities. As in the case of many radical movements, this movement went to extremes of agitation. Miss Wright did not believe in marriage; she proposed free sex unions; urged that children be separated from their parents, and called for the establishment of state institutions in which the children were to be placed and reared. The American people were not at all receptive to any proposals for the disruption of family life, and, in fact, Miss Wright herself later virtually repudiated her earlier views by marrying. But underneath this movement there were ideas which increasingly appealed to many thinking American women.

One of these ideas was the right of women to have a direct voice in politics. Another was the control by women over their property and wages. Still another was the effacing of the double standard of morality. Miss Wright and other agitators pointed out that men were an inexcusably privileged class; that no matter what their moral transgressions were they retained standing, whereas when a woman committed an infraction the whole crushing weight of social proscription fell upon her. "Why this discrimination?" asked the

woman's rights leaders of that day. They denounced it as thoroughly unjust and demanded its removal.

Intelligent men of the day realized that a new era was setting in, threatening the overthrow of "man's domination." A writer in the *Knickerbocker Magazine,* published in New York City (issue for August, 1834), told, in a spirit of trepidation, how women were beginning to demand the vote; how colleges were beginning to admit them, and how they were on the point of achieving other rights hitherto held by men as exclusive privileges. "My nerves," he wrote, "already begin to tremble in view of the momentous revolution which the evidence I have presented seems to indicate. A war of rights is pending, and every man will soon have to come out in defense of his ancient prerogatives!"

In the following years the agitation to abolish negro slavery became increasingly the dominant issue, tending to obscure other questions. Still, the revolt of women against what they thought existing injustices went on energetically, for many of the leaders, such as Lucy Stone, were at the same time agitators against slavery and advocates of woman's rights.

In 1852 and 1853 there was another organized attempt—chiefly on the part of men radicals—to discredit the marriage institution and to substitute free love. In a notable debate then published in the *New York Tribune,* Henry James and Horace Greeley effectively exposed the free-love propaganda, although their points of attack differed.

Divorce statistics were then unknown; in all government and state reports the subject was completely ignored. In fact, it was not until 1842 that Massachusetts—the first state to do so—established a general system of marriage and death statistics, and it did so only after urgent petitioning by the American Academy of Arts and Sciences and the Massachusetts Medical Society. But no provision was made by any official body

anywhere in the United States until many years later for reporting divorces.

Conditions Seventy Years Ago

Those who are inclined to disparage overmuch the state of our times may find matter for thought in Henry James's statement in 1852 that there was, undoubtedly, "a very enormous clandestine violation of the marriage bond; careful observers do not hesitate to say an unequaled violation of it." James's argument was that this arose from the difficulty of obtaining divorce, and that by freely legitimizing divorce—that is, by making it easy and inexpensive—this immorality would be reduced. Greeley's opinion was strongly the opposite. He contended that if marriages could be contracted and dissolved at pleasure it would introduce a reckless facility and wild levity. His further comments present interesting facts as to forces then busily engaged in trying to discredit the established marriage institution.

If divorce on mere application were permitted, he wrote, the innocent would be sought in marriage by those who under strict marriage laws plotted ruin outside marriage. "How many have already fallen victim to the sophistry that the *ceremony* of marriage is of no importance—the *affection* being the essential matter? How many are every day exposed to this sophistry? . . . The free-trade sophistry respecting marriage is already on every libertine's tongue; it has overrun the whole country in the yellow-covered literature, which is as abundant as the frogs of Egypt and a great deal more pernicious. It is high time that the press, the pulpit and every other avenue to the public mind were alive to the subject, presenting, reiterating and enforcing the argument in favor of the sanctity, integrity and perpetuity of marriage."

What immediate influence the campaign against marriage had it is not possible to say. Evidently not

much. It was the agitation making divorce an acceptable idea, and the demand for laws allowing a greater latitude in breaking matrimonial bonds, that then had the practical effect. There was a tendency on the part of legislators to relax the strictness of ancient laws concerning marriage and divorce. Even when these laws came, however, there was no importunate rush for divorces. An article on the subject in the *North American Review* for April, 1860, said that divorces were still rare.

It was after the Civil War that the doctrines for woman's emancipation began to show results. Such leaders as Victoria and Tennie C. Claflin demanded not merely the suffrage right for women but the complete enfranchisement of the sex. What they chiefly meant was that women should no longer be "man's chattel," but should be invested with full rights as human beings. But their views were often distorted, and they were made to appear as fullfledged proponents of a free-love campaign. So unpopular was their campaign that they were ridiculed and ostracized; influential people of that time were not disposed to tolerate any views impairing the marriage relation. Both of the Claflins, it may be said, later married.

But the fashion of publicly making light of marriage began to spread. So-called comic papers having wide circulation and vaudeville shows abounded in jokes and alleged witticisms on marriage, while serious writers professing to have a mission wrote books and plays either openly or adroitly attacking and mocking marriage. A witness who had made a study of divorce testified before the House of Representatives Judiciary Committee in 1918 that one of the leading provocations of divorce had come from the writings of extreme radicals on the sex question. He instanced Ellen Key, Bernard Shaw and others "who write in all sorts of unreason their story screeds of heathenish devilment

against the permanence of homes and against personal purity." If he meant to imply that such writings had more effect upon women than upon men he was entirely mistaken, for official statistics show that on an average twice as many—and often more than twice as many—divorces have been granted to the wife as to the husband, and although it is true that a greater percentage of divorces for adultery are granted to men than to woman, yet this is a cause in which men have the evidential advantage. And he should have added, in justice to Ellen Key, that some years before he testified she had written an article virtually repudiating her former ideas and explaining that the originators of the woman's movement never imagined that the ideals they had in mind would degenerate to a low basis.

Government Investigation

By 1881 the divorce question had become such a scandal that the New England Divorce Reform League was organized by leading Protestants and Catholics. It was made a national organization in 1885, and its stated purpose was "to promote an improvement in public sentiment and legislation in the institution of the family, especially as affected by existing evils relating to marriage and divorce." It was at the solicitation of this body that the United States government made its first investigation of marriage and divorce. This report was issued in 1887-88 by the Department of Labor and covered the years from 1867-86. Another report was issued in 1906-7 by the Bureau of the Census, covering the twenty years from 1887-1906. In July, 1917, Congress provided the funds for another investigation from 1906-16; unfortunately it was decided, because of war conditions, not to cover the previous years, but to limit the report to the year 1916.

From these three reports accurate figures are obtainable for the forty years from 1867-1906, and for the

year 1916, while the figures for other years have been estimated by members of the International Committee on Marriage and Divorce. This, then, is the result:

DIVORCES IN THE UNITED STATES

Year	Number
1861, estimated	7,114
1862-1866, estimated	42,979
1867-1870, counted	43,850
1871-1888, counted	949,746
Total for thirty-seven years	1,043,689

From 1861 to 1920 there were granted in the United States a total of about 3,393,000 divorces. The increase of divorce compared with population was, according to the 1916 government report published in 1919:

Year	Divorce Rate Per 100,000 Population	Year	Divorce Rate Per 100,000 Population
1870	28	1900	73
1880	39	1906	84
1890	53	1916	112

In particular states the increase in divorces in 1916, as compared with 1906, was enormous. In Oregon it was 109 per cent, in New Jersey 120 per cent, in Idaho 150 per cent., in Arizona 186.4 per cent and in California 207.4 per cent. Except in the District of Columbia and Colorado, South Dakota, West Virginia, Maine, Mississippi, Alabama and North Dakota the divorce rate for 1916 was higher than for 1906. Recent statistics privately gathered show a continuous increase in divorces. In New York City about five hundred more divorces were granted in 1920 than in 1919. In Providence, R.I., nine hundred and sixty-two divorces were granted in 1920, as compared with seven hundred and eighteen in 1919 and five hundred and fifty-six in 1917. New Jersey and Pennsylvania report a great increase in divorces in recent years; in Pittsburgh there was a 25 per cent increase in 1920 over 1919. In Detroit thirty-seven

hundred and fifteen divorces were granted in 1920, an increase of seven hundred over 1919. In Atlanta, Ga., eight hundred and eighty divorces were granted in 1920, as against seven hundred and seventy the previous year. Seattle has become a notable divorce center, with nearly twenty-five hundred cases a year. These are but a few examples of increases. Only a few cities, such as Baltimore, Toledo, Portland, Ore., and some others report decreases in divorces.

Chief Grounds of Divorce

Government figures show that desertion is the principal ground for divorce, with cruelty second in the list; these two causes account for nearly two-thirds (65.1 per cent) of all divorces granted. Of divorces granted to the husband, desertion has been the cause in practically one-half the cases; adultery the cause of one-fifth, and cruelty in a little more than one-sixth of all cases. But of divorces granted to the wife, the most frequent cause has been cruelty, with desertion next. Divorces granted to the wife because of the husband's adultery constituted 7.5 per cent of all the cases, as against 20.3 per cent granted to the husband for the same cause. Drunkenness as a cause for divorce has been a minor factor. A little more than one-half of all divorced couples had no children.

Two generations ago there was a general although not invariable reluctance to label oneself as a divorced person; the idea was personally and socially repugnant, and a permanent stigma was supposed to attach itself to any seeking rupture of marriage ties. But, according to Bishop Manning and others, a wholly different concept now largely prevails. In his testimony on causes of divorce, Bishop (then Rev. Dr.) Manning thus described the change:

> Under our present system we have really reached the point under which marriage among our people is no longer a perma-

nent contract. As things stand under our present law, it is a contract terminable almost at will.

Further than that, the present state of law has a worse influence. It tends to tempt people to procure divorces and produce situations in which they can procure divorces; and with numbers of people the marriage contract is entered into with that in mind. Divorce is made so easy that great numbers of people enter into the marriage contract with the thought of divorce already in mind, and they are in a state of mind under which on the most trivial grounds and for the most passing reasons they are prepared to break up the home and seek relief in the divorce courts.

Bishop Manning pointed out that another great evil was the practical effect of law in allowing the rich and well-to-do to create a domicile in whatever state it was easiest to get a divorce. This the poor could not do. He urged the need of laws applying equally to rich and poor and making it difficult to obtain divorces.

Bishop William H. Moreland of Sacramento has expressed the same thought as to a certain state of popular mind. "Our young people," he said, "knowing that the law permits a consecutive polygamy, enter the marriage state with the idea that if disappointment results they may break it off—and draw another ticket in the lottery." Bishop Moreland proposes that there should be a uniform divorce law, a ten days' notice of application for marriage licenses, and he urges the education of public opinion.

Though the increase in the number of divorces in the United States has its disquieting aspects, it cannot justly be taken as a proof of a corresponding decline in morality. When it is recalled that in former times few people, whatever grounds they had for doing so, sought legal relief from marital unhappiness, the reflection upon the moral standards of our day becomes lessened. There is good evidence that previous to fifty or sixty years ago there were abundant lapses from domestic virtue, but they did not culminate in legal action so as to leave public records of the fact. On the other hand, in more recent decades, it has been the almost invariable practice

to apply to the courts for release. It is this fact which gives our age the appearance of having degenerated, when, if we make a real comparison with other times, present conditions are not so discreditable as they seem.

CAUSES IN AMERICAN CITIES[1]

A big asylum recruits its inmates from a single court in Chicago—the Court of Domestic Relations—whose psychopathic laboratory commits two thousand patients a year as insane or feeble-minded. I visited the laboratory not long ago to ask its famous psychiatrist, Dr. William J. Hickson, the causes of divorce.

There was abundant reason for asking. Census reports had shown that 148,554 decrees were granted in 1922, more than doubling the record in 1906. Whole battalions of women—the Daughters of the American Revolution, the Women's Christian Temperance Union, the American Association of Home Economics, the National Federation of Business and Professional Women, the National Congress of Parent-Teachers, and the Federation of Women's Clubs, with its million members—were clamoring for a uniform marriage and divorce law. Already Justice Cornelius F. Collins, of the Court of General Sessions in New York, was suggesting a conference to be attended by representatives of all the states. But no one had consulted the experts best qualified to tell us the causes of divorce. Apparently no one had thought of consulting them.

Almost as if writing a prescription Dr. Hickson jotted down his answer on a little pad, tore off the leaf, and handed it to me. These are the causes he names:

1. Feeble-mindedness, plus *dementia praecox.*
2. *Dementia praecox.*
3. *Feeble-mindedness.*

[1] From article "Habit of Getting Divorces," by Rollin Lynde Hartt. World's Work. 58: 403-9. August, 1924.

Then, "Here comes a feeble-minded family, now," said Dr. Hickson, and six tenement children shuffled past, led by a hatless mother. Tests in the laboratory would determine her mental age—twelve, eleven, ten or less. Possibly they would also reveal *dementia praecox,* which Dr. Hickson describes as an insanity of the emotions.

In one form, it produces fits of uncontrollable rage. In another, it accounts for shiftlessness. In still another, it declares itself in the abominations we dodge calling by their right names. Like feeble-mindedness, it is hereditary and incurable. Though it often accompanies feeble-mindedness, it may accompany high intelligence or even genius. Dr. Hickson said:

> There are more divorces in America than in Europe because our people move from class to class. A peasant family tainted with dementia praecox comes over here and prospers. The boys are put through college. You meet them in clubs. They marry into good families, and then comes trouble. To her astonishment, a girl finds that she has an intermittent brute for a husband, or that he is a "dud" of whom she can make nothing, or that he is a moral monstrosity. In Europe, the same fellow would have married into the peasant class, where wives endure meekly. There would be no divorce. Here, matters take a different course, with a different result.

All this was said hurriedly, for I had interrupted an examination in the psychopathic laboratory; but it was not a result of hurried thinking. It summed up conclusions arrived at by an eminent specialist after years of patient, scientific investigation. They are definite conclusions. The specialist did not say, "Here you have some of the causes"; he said, "Here you have the causes."

In the same building, I sat with Judge William L. Morgan during a session of the Court of Domestic Relations. Afterward, he, too, named the causes of divorce:

1. Poverty. Women want what they can't get.
2. Neglect of women by their husbands.
3. Low mentality.

4. Drink. Prohibition has changed this only in that another class now drinks.

5. Nagging.

6. Sex. Couples improperly mated.

Judge Morgan was at leisure and spoke slowly. But he did not say, "Here you have some of the causes, and remember, the Court of Domestic Relations deals mainly with lower class people;" he said, "Here you have the causes," and he put low mentality third among six causes. Even then, he did not specify *dementia praecox* and feeble-mindedness.

In Cincinnati, I sat with Judge Hoffman of the Domestic Relations Court, which is unique among such courts in being also a divorce court. The litigants and witnesses I saw that morning were ordinary people; no newspaper artists had come there to sketch leaders of fashion; on the other hand, there were no hatless women and no Negroes.

While a wife was testifying—about non-support, temper, and the rest—Judge Hoffman turned to me and whispered, "Listen to all this light talk! By and by we'll get at realities, but first I'll have the man brought in, for I want to study him. He's the type." So the man was brought in—a decent enough person, seemingly; to my inexperienced eye nothing monstrous betrayed itself. Then I read the report of a woman physician who had questioned the wife. The man was a degenerate. As I finished reading the report, Judge Hoffman said, "Now you know what makes divorces; in nine cases out of ten, it's this."

Five years ago, when addressing the American Institute of Criminal Law and Criminology, he called it three out of four. He then said: "In the twelve hundred cases heard in the Cincinnati court, confidential statements have been made by one, and sometimes by both, of the parties concerning conditions not revealed in the hearing of the case. In many of these cases the

authenticity of the statements has been confirmed beyond a doubt."

Here Judge Hoffman digressed for a moment to refer his hearers to some unpleasant books by Havelock Ellis, Freud, and Kraft-Ebing. Resuming the account of his own investigations, he said: "Eliminating the possible fact that the parties have not in every instance spoken the truth, yet it is very probable that the data contained in these statements is as reliable as, and certainly it is more voluminous than, that on which Havelock Ellis and others have based their conclusions."

Today, the famous judge not only believes in a still greater prevalence of such conditions, he speaks of "the type." Invariably he looks for that type. Stories of non-support, cruelty, desertion, or unfaithfulness are to him mere light talk hiding the real cause, though Judge Morgan, a man of equal ability, appears to ignore that cause.

Returning to New York, I called upon Mr. Leonard McGee, attorney-in-chief of the Legal Aid Society, which handles four thousand "D.D." cases a year—in office parlance "D.D." stands for "Domestic Difficulties." Though fully as discerning as Judge Hoffman, and though finding a great prevalence of the conditions Judge Hoffman reports, Mr. McGee does not think them a cause of divorce. He says that degraded wives are generally content to be degraded. His ideas as to the real causes of divorce are implied in his celebrated "Ten Commandments for Wives," followed by his equally celebrated "Ten Commandments for Husbands." To the woman he says:

1. Do not be extravagant.
2. Keep your home clean.
3. Do not permit your person to become unattractive.
4. Do not receive attentions from other men.
5. Do not resent reasonable discipline of children by their father.
6. Do not spend too much time with your mother.

7. Do not accept advice from the neighbors or stress too greatly even that of your own family concerning the management of your domestic affairs.
8. Do not disparage your husband.
9. Smile. Be attentive in little things. An indifferent wife is often supplanted by an ardent mistress.
10. Be tactful, be feminine.

And to the man he says:

1. Be generous according to your means.
2. Do not interfere with a woman in the management of purely domestic affairs.
3. Be cheerful. Nothing reacts more surely on the nerves of a tired woman to engender suspicion and ill-temper than the home-coming of a gloomy, taciturn husband.
4. Be considerate.
5. Make love to your wife.
6. Do not scold.
7. Establish your own home, if possible, remote from your wife's and your own immediate families.
8. Do not keep a lodger.
9. Cultivate neatness and personal cleanliness.
10. Be kind and just to your children.

Mr. McGee's twin decalogues nowhere imply a conviction that he is dealing with feeble-mindedness or with *dementia praecox*, though he tells me that often he deals with an amusing ignorance. For example, two people have agreed to disagree and both come to the society thinking that all that is necessary is a written memorandum of the disagreement and that then a divorce results. Says Mr. McGee:

When you explain to them that collusion is not tolerated by the courts, the examiner is asked, "Do you mean to tell me that I cannot get a divorce when my husband is willing?" You explain that marriage is a status safeguarded by the state and in which the state has an interest, and the state and only the state can take jurisdiction over marriage status. You explain, therefore, that nothing can be done for them. In most cases the applicants are satisfied. The exception was when a young lady flounced out of the office, saying "I will go and see a real lawyer, who will take my case."

When he talked with me, Mr. McGee seemed much interested in the trouble that may come if people of different religious beliefs risk marriage, and spoke of a

Jew whose Scottish wife was a Presbyterian. But he appeared not to consider this a very frequent cause of divorce. Throughout our conversation, he was careful to avoid greatly emphasizing any one cause.

Also in New York, I questioned a noted sociologist, Dr. Katharine Bement Davis. For several years she was superintendent of the New York State Reformatory for Women. Later, Mayor Mitchell appointed her Commissioner of Correction. She is now General Secretary of the Bureau of Social Hygiene, which recently induced a thousand married women to reply to a questionnaire, Their answers, remarkable for frankness, she has classified and published in a set of pamphlets admirably clear and instructive. To my query regarding the cause of divorce, she said instantly, "It is physical mismating; ask Judge Hoffman," and gave me the pamphlets. I did not find in them any mention of the conditions Judge Hoffman reports. I was led to believe that, while Judge Hoffman follows one line of investigation, Dr. Davis follows another. Nor does she entirely agree with Judge Morgan of Chicago. She attaches supreme importance to the cause which the Chicago investigator puts at the end of his list of six causes.

Forty-five seconds from Broadway, in West Forty-Eighth Street, New York, a church opened a social clinic several years ago. The pastor, the Rev. John G. Benson, had specialized in psychology at Harvard, and had applied his knowledge while conducting a social clinic at Brazil, Indiana. All told, fully fourteen thousand couples have run to him with their difficulties. "In 80 per cent of the cases the woman comes first," he says. "Conservatism, love of children, regard for social standards, and the sentiment attaching to orange-blossoms unite in prompting her effort to save the home." Concerning the causes of divorce, I have talked with Dr. Benson twice; the first time, he said, "I generally start in by looking for the other man or the other woman";

the second time, when more at leisure, he gave as the principal causes of divorce:

1. Relatives.
2. Emotional, related to physical, incompatibility.
3. The survival of primitive, more or less military idea of marriage in a democratic age. The modern wife rebels. Woman is just beginning to find herself, and her emotional experiences are those of a released soul.

I could not learn that Dr. Benson had ever detected the conditions which Judge Hoffman believes to be the cause of divorce, or those which Dr. Hickson finds, and the one which Dr. Davis regards as the supreme cause Dr. Benson barely notes.

Another clergyman, the Rev. Ralph Hall Ferris, directs the Bureau of Domestic Relations in Detroit. He was at one time an instructor at Union Theological Seminary in New York. Later, he was at the head of the New Testament Department of Chicago Theological Seminary. During the war he held the rank of major. In his present position he has dealt with twenty thousand cases, and he traces divorce among such people to:

1. Hasty marriage, for which physical attraction provides the sole motive. Then, when the economic pinch comes, the pair at once begin quarreling.
2. Lack of religion. The majority of these people, even when they are church-members, are not church-attendants.
3. Drink.
4. Uncontrolled temper.

Who and what are the people represented by Mr. Ferris's twenty thousand cases? He tells me:

> Most of them are sub-normal, borderline, semi-criminal types. Most of them are registered with our hospitals, also, and with various social agencies where they have applied for help. They are physically inadequate, economically inadequate, socially inadequate. Having failed in all other relations, they fail in domestic relations.

New Yorkers, assuming that divorces are obtained only by the well-to-do, look surprised when I quote Mr.

Ferris as an authority. But precisely the divorces he deals with are what help, by no means inappreciably, to give us our appalling divorce statistics, worse in the last census than ever before. You can visit a divorce court over and over again and not see newspaper artists sketching leaders of fashion. After visiting courts of domestic relations, to which warring couples repair before and after divorce, I recall most vividly a queer Negro (skull too big, chin too little), who had married a half-witted white girl; a cook fleeing from her feeble-minded husband and his feeble-minded children; a stupid Albanian accused of wife-beating, and types still more unlovely.

For four years Mr. Bradley Hull, who has since become Judge Hull, was director of the Bureau of Domestic Relations in Cleveland. He was still director when I called upon him. I found that he had approached the divorce problem very much as Mr. Ferris does and as Mr. McGee does. In Mr. Davis's theory, in Dr. Hickson's, and in Judge Hoffman's, he shows little interest. The bureau has as yet no psychopathic laboratory.

Judge Hull emphasized three causes of divorce:

1. The economic pinch.
2. Nerves.
3. Faulty education.

Regarding the economic pinch, he says:

Men sometimes waste their money and let their families suffer, or, on the other hand, stint the home while investing their money. Here and there a man stints the home in order to keep up appearances for business reasons; the husband in one of my cases drove his automobile and was a member of two leading clubs, while his wife and three children were dependent for clothing on the charity of friends. Many couples marry before the man is capable of making a living; when he can no longer borrow or get credit, he disappears. Divorces cannot be reduced very much until the state prevents the marriage of people who are unable to maintain a home. I would require all couples to publish their intentions for a week or two before obtaining a license. That would compel them to think the matter over seriously and give interested parties an opportunity to protest.

Regarding nerves, Judge Hull says:

Failure to make allowance for ailments causes a great deal of trouble that cannot be settled out of court. When a wife gives a husband a "bawling out" for no apparent reason or some trifle, he should consider that perhaps she has had a very hard day with the children or that a headache is "driving her wild." Similarly when a man comes home with a grouch in his system because of something that has happened in his business, the wife should avoid sharp words. .

By faulty education, Judge Hull means the education that minimizes struggle. He says:

Ours is an age of anaesthetics, we run away from the disagreeable. We spare our children the necessity of doing anything difficult or distasteful, and the correspondence schools perfectly understand us when they advertise "easy, pleasant study, leading to a job that will bring luxuries." At home, we let our children do as they like and "tell" us.

Here, then, are eight distinguished investigators, no two of whom have reached identical conclusions as to the causes of divorce. Judge Hull, Dr. Benson, Mr. McGee, and Judge Morgan study divorce as a shrewd novelist might. Mr. Ferris, with a staff of assistants, goes more inquisitively into the sociological background. Dr. Davis proceeds as a physiologist and psychologist combined, dealing with one side of the problem and that only. Dr. Hickson is always the psychiatrist. Judge Hoffman specializes in a single branch of psychiatry. Meanwhile the usual divorce-court judges, whom we might expect to find eager to detect the underlying causes of divorce, give little or no attention to its underlying causes.

Says Judge Hoffman:

In a city of one of the southwestern states a judge grants a divorce in all cases, holding that the mere fact of the filing of the complaint is sufficient to warrant a decree. In another city a judge has said that he has heard and decided as many as 000 cases in thirty days. These are not exceptional instances. There are few divorce applications refused in any jurisdiction; all are granted without any investigation of the family conditions, or any consideration for the clear right of children to be protected, or any inquiry as to the truth of the charges, or the basic cause of the separation, or the physical or mental conditions of the parties, so essential in determining whether

they should be permitted again to assume the marriage obligation.

Few judges worry about the future of the divorced. In a western city a judge has said, "Every divorce makes four people happy."

It is true that a judge cannot easily discover the real cause of divorce. Says Dr. Hickson:

> These dementia praecox cases are consummate liars, and all the divorce courts encounter fraud. People denied a divorce in one state rush to another, and lie about the former attempt. In New York State, where there is divorce for one cause only, people furnish the one cause or say that they have furnished it. Everywhere divorces are obtained for alleged causes, wholly different from the real causes. In Des Moines, for example, it is recorded that a certain woman endured "cruel and abusive treatment such as to endanger life," although her husband, whom I knew intimately, was the gentlest of souls, and although one week after the divorce she remarried. Many lawyers encourage fraud; according to Judge Hoffman, "It is a frequent occurrence that lawyers request the court to have cases tried on a fictitious issue, that no stigma may be placed upon the parties or their children."

Regarding the real causes of divorce our university sociologists are as incurious, almost, as the divorce-court judges. Even Professor Edward Alsworth Ross, who usually marshals profuse data, disappoints us here. After declaring that the family "is now less stable than it has been at any time since the beginning of the Christian era," and after quoting writers who predict that, if divorce continues to increase at the present rate, "by the middle of this century a fourth of all American marriages will end in the divorce court, and by the end of the century a half," he mentions with respect the causes alleged in divorce courts and deplores "the decay of the virtues upon which the family rests, namely, self-sacrifice, forbearance, and loyalty." He tells us "these traits of the adaptive or self-subordinating type of character are yielding ground to the traits of self-interestedness, self-assertiveness, and love of self-direction." There he stops. With Dr. Hickson's investigations, with Judge Hoffman's, and with Dr. Davis's, he seems unfamiliar.

No adequately scientific study of the causes of divorce has ever been made. None has been attempted. When you visit the bookshops, no dealer has heard of a volume on divorce or of any "call" for one. Card catalogs in the great libraries show books in Italian, books in French, books by Englishmen, and a few by Americans. The few American authors avoid going deeply into causes.

A number of the writers are jurists, who would alter the divorce laws. They tell us that New Hampshire recognizes fourteen grounds for divorce; that South Carolina recognizes none at all; that when divorced people remarry, the remarriage is legal in one state, an affair of bigamy in another; that divorce is too difficult or too easy; and that "something should be done."

Other writers approach divorce from the religious viewpoint. Catholics follow the Catholic Encyclopædia, which says, "Canon law of the Roman Catholic Church unqualifiedly forbids divorce a *vinculo matrimonii* if both parties at the time of marriage had been baptized Christians." They remind us that in the east, where Catholics abound, divorce is less common than in the west, where Catholics are relatively few. The Episcopalians defend their canon restricting the marriage of divorced people. The Evangelicals, though often less strict on that point, abhor divorce, and all such writers recklessly exaggerate its prevalence.

They point to Nevada, where there are more divorces than marriages, not to Georgia where marriages outnumber divorces nineteen to one, nor to New York state, where marriages outnumber divorces twenty-two to one, nor to the District of Columbia, where marriages outnumber divorces thirty-five to one. They avoid telling us that there are only about half a million divorced people at large in the United States, with its population of two hundred times that number, and that there are only about eleven thousand divorced people at large in New York city, with its population of six million. They conceal the fact that only about one marriage in ten, the country

over, ends in the divorce court. They are alarmists, making the worst of a bad matter, and in their search for causes they are uniformly superficial.

It is they who have attributed divorce to the movies, to yellow journalism, to jazz, to the Ford car, and to irreligion—irreligion especially. Even a judge of a court of domestic relations once declared, "The whole trouble is, Americans have put God out of their lives." Whereas, during the very period when church membership has increased, divorce has increased.

PROBLEMS OF MARRIAGE AND DIVORCE[1]

The rise of the marriage contract, with its recognition of some power of personal choice and some right of individual liberty accorded to women, is the suggestive clue to the course of social evolution which in any given era outlines the terms of legal marriage. The rise of the marriage contract is itself, however, simply one element in the slow movement of society toward the recognition of contract powers in general, and the emergence of women from a perpetual legal minority. Problems of marriage and divorce, therefore, are and must be parts of the whole problem of the just and useful position of women in society. This is the reason why ultra opponents of "women's rights" always and instinctively relate the greater freedom of women to domestic disaster; and this is also the reason why the ultra proponents of "women's rights" as instinctively begin their demand for larger sharing of the powers and obligations of social life by women with some radical attack upon that family order which rests upon the legal despotism of the husband and father.

There is today a feeling of almost hysterical alarm regarding the present conditions of family life. The demonstrable and large increase of divorces throughout Christendom, the weakening of family ties by reason of

[1] By Anna Garlin Spencer. Forum. 48: 188-204. August, 1912.

changed economic, educational and social conditions which secure to minor children as well as to wives great freedom of choice and liberty of action, give deep concern to all, and awaken moral terror in many. No one, however, who really believes that we should not return to the absolute control of women by men, and to the harem and the zenana as the ideal home, need be in fear of any unique domestic catastrophe.

Most of us have come to believe that marriage and the family are social institutions, rising in answer to social needs and changing in accordance with general social evolution, and at no time to be studied as isolated facts, but rather always as related parts of the whole process of social development. All who believe in this manner should approach the problems of marriage and divorce with clear minds and sunny tempers, with breadth of vision and with balanced judgment. Such students at least can remember, and with satisfaction, that the statistics of divorce, which so often provoke pessimism respecting our American family life, must be read in connection with other statistics which prove a progressively higher average of just and noble family relationship among those who do not become divorced. The facts of scandalous proceedings in the "smart set" should never blind the judicious to those other facts which show that the "malefactors of great wealth" are few, and the favored of fortune who behave like silly and wicked youth are a small minority. Admitting, however, the distinct increase in divorces relative to population, and accepting it as an evil in that which it indicates as well as in that which it proves, there must also be confessed a considerable and regrettable trend of modern life in the direction of the instability of the family. The love of change and the impatience of control among our youth; the easy movement of population which makes "home" often but an attachment to the moving-van; the flexible yet complicated social arrangements which make it easy to shirk individual responsibility; the economic

pressure, intensified by the desire so painfully common to live more luxuriously than one can afford; the widespread results of invention which release many from drudgery before they are fitted for skilled labor; the free public education which enables many to appropriate the superficial fruits of culture before they have attained moral discrimination in their efficient use for the higher purposes of life—all these and many more elements of our rapidly changing civilization tend to make the home and all its interests subject to unprecedented disturbance from the many-sided life without. Also we must give serious attention to the fact that in the United States there is great divergence of inherited standards, laws and customs regarding the basis of marriage, the righteousness or wickedness of possible divorce and the propriety or impropriety of remarriage after domestic changes, which confuses the matter. For want of a clear ideal of religious values and social demands involved, the rule of personal desire and individual idiosyncrasy has too great predominance. Here, where ethical doctors disagree and moral teachers widely differ, youth makes its ideal an exaltation of romance in marriage choices; and mature years demands the right of the most extreme individualism. The sense of intellectual freedom to believe what one wishes, and the "will to believe" what is most pleasant and seems most easy to realize in action, often join to make individual preference the only rule of life.

We have in our marriage laws and customs reminiscences in a specific manner of the three main channels of thought and life which make up what we call Christian civilization. We have first the Jewish ideal of marriage, which has come to us with our special religious inheritance. This is an ideal which includes a belief in the rightful and proper subjection of women to men, but exacts of men protection for women. It elevates the conception of marriage to a plane of purity and faithfulness superior alike to celibacy and to unchastity; but

includes divorce, easy for men to obtain, difficult for women; yet justifiable for both, provided the terms of separation and of possible remarriage are defined by the wisdom of the law as interpreted by rabbis. We have also a large inherited influence from the Roman law which has given the legal basis of all our later statutes and which has modified all tribal customs of the Germanic peoples. In Roman marriage, the patrician form, religious and indissoluble, and the plebeian form, secular and legally terminable, but carefully guarded as a legal contract, both hold firmly respect for family autonomy as well as the subordination of caprice to justice and right. These elements of the sacred and the secular marriage of Roman law are retained in some form in our present civilization. We have inherited also another potent influence upon the domestic order, one which is in our blood more than in our religion or our law, namely the Anglo-Saxon love of personal liberty and sense of individual rights; that which first gave to women a voice in the disposition of their own persons, and initiated for our special social order a proud restraint upon the tendency of the family to sacrifice to its own autonomy the happiness and well-being of its members. These varied ideals and elements of custom and law were all incorporated by Latin Christianity into its control of marriage, although all were modified and changed in emphasis. The Church adopted the high demand for faithfulness in the marriage tie, the subordination of woman to man in the domestic life, and the ethical significance of the family order which the Jewish religion inculcated. It rejected Jewish divorce and lowered the rank of marital virtue by placing celibacy above it in the scale of spiritual excellence. The Church accepted as its own standard the patrician form of Roman marriage as a religious sacrament, indissoluble save by death, and making second marriages even after such bereavement rather shameful concessions to human weakness. A large trace, however, of the plebeian form of secular regulation is to

be found in the history of all Christian nations; and Protestant Christianity restored the state to its superior control over marriage. The trend of all laws, customs and moral reforms in Christendom, especially in Protestant Christendom, has been toward a wider and deeper realization of the Germanic respect for womanhood and the Anglo-Saxon forms of marriage, after the right of contract was recognized and the social value of the wife in part estimated. Especially has Christian civilization appropriated the Germanic idea that a woman has some right to refuse to marry a hated or disliked man, and that youth has a right to selective love and its fruitage in a chosen union of the sexes.

Today these varied reminiscences of our past mixed inheritance give us disagreements even in the fundamentals of ethical ideals in marriage; and often the friction that we develop in discussion dates back to our composite union of national ideals in the melting pot of early Christianity.

Wherever and whenever the rights of women are recognized as those belonging to all human beings alike, there and then arise problems of marriage and divorce. For there and then marriage becomes a *contract,* and a contract can be broken for the same reasons that a contract may be made, namely, the good of the parties involved. The difficulties inhering in the adjustment of the domestic order to—

> Two heads in council,
> Two beside the hearth,
> Two in the tangled business of the world

are identical with the difficulties that inhere in democracy as a general social movement. Despotism is easy if you can secure a despot capable of holding his place. All else is a matter of adjustment to justice and right; and all such adjustment is difficult. In the midst of the confusion of ideal and action one thing is sure; namely, that women in the new freedom that has come

to them in the last hundred years of Christian civilization will not longer endure the unspeakable indignities and the hopeless suffering which many of them have been compelled to endure in the past. That last outrage upon a chaste wife and a faithful mother, enforced physical union with a husband and father whose touch is pollution and whose heritage to his children is disease and death, will less and less be tolerated by individual or by social morality. In so far as greater freedom in divorce is one effect of the refusal of women to sustain marital relations with unfit men—and it is very largely that today—it is a movement for the benefit and not for the injury of the family. Permanent and legal separation in such cases is now seen by most enlightened people to be both individually just and socially necessary. Whether such separation shall include remarriage of either or both parties is still a moot question in morals. The tendency, however, in all fields of ethical thought is away from "eternal punishment" and in the direction of self-recovery and of trying life experiments over again in the hope of a better outcome. It is likely that marriage and divorce will prove no exception to this hopeful tendency. Moreover, so far as the testimony of actual life is valid as against theories only, the countries where no re-marriage is allowed show a lower standard of marital faithfulness, of child-care and of true culture of the moral nature in the relationship of the family group, than is shown in those countries that grant for serious causes absolute divorce with full freedom for re-marriage.

That all divorces now obtained are for serious reasons, however, no one dare affirm. The most harmful element in the problem both in its personal and in its social aspects is the fact that selfishness, superficial and trivial causes of pique, of wounded vanity, or rash and childish whim, of even the mere suggestive power of newspaper scandals, may lead to a hasty and unnecessary termination of that most important of all human rela-

tionships, the marriage upon which the home is builded. The special need, however, even at this danger-point, is not to focus attention, as is usually done, upon evils to be avoided in divorce laws and their operation. What is needed most is studious and practical devotion to constructive social measures that may be adopted for aid to those in marital difficulty, and for the prevention of those social and personal conditions which lead to marital difficulty. It is high time we began to work for the lessening of *causes of divorce,* for relief in family distress and misery, for helpful measures of discipline through recognized and adequate agencies for all who need an external conscience and an outside judgment to make a success of their married life. Not only is it true that an ounce of prevention is worth a pound of cure, but it is also equally true that a pound of help at the right time and in the right way to weak and ignorant and wayward people is worth a ton of prohibition. What many people need most is not to be forbidden a divorce, but to be helped radically in their lives and in their circumstances to a position where they will not want a divorce.

In this connection we must consider the fact that our own is the first form of civilization that has tried in any large way the experiment of placing the entire burden of securing the success of marriage and the family life upon the characters and capacities of two persons. In primitive social orders, and in the older civilizations, each married pair and their children were sustained and disciplined and in greater or less degree controlled by the collective family order in which they lived. Now, we trust two people in early youth, undisciplined, undeveloped, perhaps deficient in mental, moral, physical, or economic power, to marry as they will; bear children or not without let or hindrance; take care of their children or not as seems desirable or possible to them; separate with ease, with or without legal procedure—and the burden of all the failures in marriage, parenthood

and the family relationship is placed upon society as a whole. The consequences of the many failures that thus result have brought all thoughtful persons to the point where they see clearly that society, which in its social service is called upon to take care of failures, must assume a social control and discipline that will reduce those failures to the minimum. This means that we must come to an agreement about the method and extent of such social control of the present individualistic marriage as shall be just to persons and helpful to the social order.

The first question to be raised and answered in the effort to reach such an agreement is this: What force in modern society is adequate and suitable as the agency of such social control of the individualistic marriage in the interests of social welfare? The answer seems clear to many of us. The modern state is the only adequate and suitable agency for efficient social control of marriage. The old tyranny of tribal custom is gone; it will not return. The unquestioned despotism of the patriarchate is no more—and where is the sane person who would desire its revival? The family bond of blood relationship, which used to place all domestic responsibility in a "family council" with an acknowledged head, is already stretched to cover so wide an area of personal choice that it cannot hold firm against unsafe or unwise choices; and the tendency is toward more and more democracy in the family life. The accepted rule of rabbi and priest no longer exists, and he would be rash indeed who should urge its reinstatement with the support of the strong arm of the law. The modern state, however, has absorbed within itself the "mother-right" and the "father-rule"; the Church control and the educational standard; and the law, as the expression of its own will and not as the temporal enforcement of spiritual canons. The modern state is the final appeal in individual need and the ultimate authority in social conduct. Of all modern institutions, therefore, the state alone is powerful enough, definite enough, and united enough in its ethical demand, to

accept and efficiently exercise for all mankind the responsibility of the care, the control and the development of individual life in all group relationships. It is, consequently, the only fit agency by which social control of individualistic marriage, in the interest of social well-being, may be assumed and maintained.

The most important first step, therefore, in efforts of constructive work toward securing the stability of the family is insistence upon a uniform civil marriage service. The civil authority over marriage needs no demonstration to any form of Protestant Christian faith; for it is wrought into the history of the more democratic forms of Church administration. The early settlers of the United States preserved clear traces of Cromwell's assertion of state control over marriage and family order in the requirement, universal in the colonies of New England and the eastern coast, that a magistrate alone should have power to legalize marriage. A "minister might be present" and "make a short exhortation," but he must "not preach a sermon" on such occasions, lest he thereby detract from the dignity of the civil officer. We have not kept that jealous regard for the civil marriage, since we now allow ministers of different faiths to legalize the relation between the sexes. But we do recognize that when the minister of any religion is allowed to legalize the marriage bond he does it with delegated power; for he has always to say, "By the power vested in me by the state I pronounce you husband and wife." It is clear to many of us that we should return, and at once, to the early New England requirement for a civil marriage as the true and only legalization, whatever additional religious service may be desired as satisfying the religious sentiment.

This required civil marriage should be limited in form to such words as persons of all religious faiths could conscientiously use; it should be performed in such place as would safeguard privacy and protect from all trivial and coarse associations; it should be performed only by

special magistrates set apart for this important function, and capable of properly representing the dignity and power of the state in this most vital public and private concern. The beautiful "Halls of Marriage" of some European Guild buildings might well be reproduced in the United States. Justices of distinction and high character, who were no longer physically equal to the hardest work of the courts, might well be set aside for this task as a crowning honor and service. Women judges, also, when we have them, could serve well in this duty of ushering a new family group into existence.

If we could once establish the state in its rightful place of social control of marriage, we could then move on to the logical next step in securing greater stability and efficiency in the family order—namely, the protection of the family against the marriage of the unfit. The most radical and vital treatment of pathological conditions in the modern family is not to tinker with divorce, which at worst is only a symptom of deeper social disease, but to take measures to prevent so many people from marrying who are not physically, mentally, morally or economically able to make marriage a social advantage. The stability of the modern family, that is to say, the stability of the family under gradually extending democratic conditions, depends not alone or chiefly upon keeping people together who have once married, and that without regard to their worth or their happiness; but rather in removing from the currents of family descent the poisonous elements of human degeneracy which always make for social disorder and disintegration. Experience has proved beyond the shadow of a doubt that the largest producing cause of human misery and social retardation is the marriage and child-bearing of the feeble-minded, the epileptic, the victims of diseases induced by vicious habits, and of all those of degenerative psychosis tending toward insanity, crime or helplessness. We have a larger number of these degenerates, in relation to our population, than ever burdened preceding civi-

lizations. That is because modern charity keeps such degenerates alive and safe where under harsher social conditions nature would kill them off early. We are, therefore, under bonds to future generations, if we would not make our very growth in social tenderness a means of social degeneration, to make it impossible for the markedly unfit to bring forth seed after their kind. When the state assumes its rightful control over marriage, the legal family can be wholly protected against this evil; and sexual relationships of an irregular sort can be made innocuous, to the future at least, by means of various forms of human "sterilization" already understood and to some extent practised. That "God gives children" who should never be born is a superstition that must be outgrown, if social progress is to be made in conditions where nature's hand is stayed in her useful destruction of the worse than useless human failures. The twin superstition that the sexual instinct is too personal and private a possession to be rightly governed by public laws must also be outgrown. Many states are trying experiments like those of Indiana along the line of such social control both of legal marriage and of sex-associations not legalized, as shall protect society against its worst foe, which is the hopeless incompetency to social demands of any considerable class of the population.

Next in importance to preventing marriages which should not be allowed, is to help in making more permanent and successful those that society has permitted. Here again it is not the effort to make "uniform divorce laws," of whatever sort, which is the vital thing—certainly not the effort to secure such uniform laws as will forbid all escape from the marriage bond even when it has become intolerable; nor is it the settlement of the vexed question of re-marriage after divorce. The vital thing is to secure such social agencies as may urge deliberation, offer wise counsel, and provide needed aid to ignorance and waywardness and wilful selfishness when difficulties appear in the family life. The vital need is

for the state, aided by volunteer helpers, to place at the service of the foolish and the confused, the distressed and angry, a truly parental aid in "patching things up" and "trying to go on" even when the family outlook is dark and threatening. The new Domestic Relations Courts, one of which has been established in New York city, and one in Chicago, are a promising beginning of what is most needed. The Children's Court, with its probation system applied first to children only and now to delinquent parents with their children, has shown us the way. The number of grown-up children, people with adult bodies but childish minds and babyish tempers, is appalling. They need as careful and ingenious discipline as do minors, when they come to grief through faults and misfortunes. A set of magistrates, chosen for special qualities of mind and heart; a private hearing, where the interview may have the sacredness of the confessional; a probation system, made so flexible and all-embracing that it may worthily take the place of the old "family council" of an earlier type of domestic order; a rigid law, compelling a pause of some proper and specified time before the most rebellious couples are able to escape from their assumed obligations to each other; a needed relief from constant irritation of each other's presence while this pause exacts deliberation before final decisions; a tendency, strongly and consciously established by the Court of Domestic Relations, in favor of the rehabilitation of the family and against all separation or divorce not found to be necessary as a release from unbearable conditions—these are the vital needs today. To secure them, two things are absolutely essential; first, *the abolition by state law, rigidly enforced, of all commercial trafficking in divorce by any lawyer of any grade or sort;* and, second, a turning of the forces that make for moral guidance in the community from the negative to the positive, from the prohibitive to the constructive, in dealing with the problems of marriage and divorce. So long as any class of people in the community

can make money by breaking up families, families will be broken up that might be held together. So long as the moral sense of the churches and of social workers is engaged chiefly in trying to get laws about divorce fixed in certain directions, rather than in trying to help people not to want to get divorced, there will be so heavy a responsibility laid upon the weak and undeveloped that they cannot measure up to its demands. We must make the family life more stable; that everyone admits. We can only make it more stable in a democratic society by working from within outward; from character and social condition toward law; not solely or chiefly by changes in statutes and by penalties for disobedience to laws made for the most part by people who are so wisely and happily married that they are wholly content!

New thoughts for the new time we need most surely in the realm of law as applied to the family order. To let what Channing called "that bondage to habit which lives on its old virtues" enslave us is foolish indeed. New thoughts and new works for the new days; but above all, in respect to the home which is the central socializing force in human society, a new consecration to the utmost reach of social wisdom and to the most faithful obedience to the social demand upon the personal life.

MARRIAGE [1]

In regard to marriage, as with all the other traditional bonds between human beings, a very extraordinary change is taking place, wholly inevitable, wholly necessary as a stage in the development of a new life, but by no means wholly satisfactory until it is completed. All the traditional bonds were based on *authority*—of the king, the feudal baron, the priest, the father, the husband. All these bonds, just because they were based on authority, are dissolving or already dissolved, and

[1] From article "Marriage and the Population Question," by Bertrand Russell, F.R.S. International Journal of Ethics. 26: 443-61. July, 1916.

the creation of other bonds to take their place is as yet very incomplete. For this reason, human relations have at present an unusual triviality, and do less than they formerly did to break down the hard walls of the ego.

The ideal of marriage in the past depended upon the authority of the husband, which was admitted as a right by the wife. The husband was free, the wife was a willing slave. In all matters which concerned husband and wife jointly, it was taken for granted that the husband's fiat should be final. The wife was expected to be faithful, while the husband, except in very religious societies, was only expected to throw a decent veil over his infidelities. Families could not be limited except by continence, and a wife had no recognized right to demand continence, however she might suffer from frequent children.

So long as the husband's right to authority was unquestioningly believed by both men and women, this system was fairly satisfactory, and afforded to both a certain instinctive fulfilment which is rarely achieved among educated people now. Only one will, the husband's, had to be taken into account, and there was no need of the difficult adjustments required when common decisions have to be reached by two equal wills. The wife's desires were not treated seriously enough to enable them to thwart the husband's needs, and the wife herself, unless she was exceptionally selfish, did not seek self-development, or see in marriage anything but an opportunity for duties. Since she did not seek or expect much happiness, she suffered less, when happiness was not attained, than a woman does now: her suffering contained no element of indignation or surprise, and did not readily turn into bitterness and sense of injury.

The saintly self-sacrificing woman whom our ancestors praised had her place in a certain organic conception of society, the conception of the ordered hierarchy of authorities which dominated the middle ages.

She belongs to the same order of ideas as the faithful servant, the loyal subject, and the orthodox son of the Church. This whole order of ideas has vanished from the civilized world, and it is to be hoped that it has vanished forever, in spite of the fact that the society which it produced was vital and in some ways full of nobility. The old order has been destroyed by the new ideals of justice and liberty, beginning with religion, passing on to politics, and reaching at last the private relations of marriage and the family. When once the question has been asked: "Why should a woman submit to a man?" when once the answers derived from tradition and the Bible have ceased to satisfy, there is no longer any possibility of maintaining the old subordination. To every man who has the power of thinking impersonally and freely, it is obvious, as soon as the question is asked, that the rights of women are precisely the same as the rights of men. Whatever dangers and difficulties, whatever temporary chaos, may be incurred in the transition to equality, the claims of reason are so insistent and so clear that no opposition to them can hope to be long successful.

Mutual liberty, which is now demanded, is making the old form of marriage impossible. But a new form, which shall be an equally good vehicle for instinct, and an equal help to spiritual growth, has not yet been developed. For the present, women who are conscious of liberty as something to be preserved are also conscious of the difficulty of preserving it. The wish for mastery is an ingredient in most men's sexual passions, especially in those which are strong and serious. It survives in many men whose theories are entirely opposed to despotism. The result is a fight for liberty on the one side and for life on the other. Women feel that they must protect their individuality; men feel, often very dumbly, that the repression of instinct which is demanded of them is incompatible with vigour and initiative. The clash of these opposing moods makes real mingling of

personalities impossible; the man and woman remain hard and inseparable units, continually asking themselves whether anything of value to themselves is resulting from the union. The effect is that relations tend to become trivial and temporary, a pleasure rather than the satisfaction of a profound need, an excitement, not an attainment. The fundamental loneliness into which we are born remains untouched, and the hunger for inner companionship remains unappeased.

No cheap and easy solution of this trouble is possible. It is a trouble which affects most of the civilized men and women, and is an outcome of the increasing sense of individuality which springs inevitably from mental progress. I doubt if there is any radical cure except in some form of religion, so firmly and sincerely believed in as to dominate even the life of instinct. The individual is not the end and aim of his own being: outside the individual, there is the community, the future of mankind, the immensity of the universe in which all our hopes and fears are a mere pin-point. A man and woman with reverence for the spirit of life in each other, with an equal sense of their own unimportance beside the whole life of man, may become comrades without interference with liberty, and may achieve the union of instinct without doing violence to the life of mind and spirit. As religion dominated the old form of marriage, so religion must dominate the new. But it must be a new religion, based upon liberty, justice and love, not upon authority and law and hell-fire.

SIGNIFICANCE OF INCREASING DIVORCE[1]

The census figures dissipate many false impressions. It is often assumed that many couples separate precipitately before they have given marriage a fair trial; but the average interval before separation exceeds six and

[1] By Edward Alsworth Ross, Professor of Sociology at the University of Wisconsin. Century Magazine. 78: 149-52. May, 1909.

one-half years, and is not diminishing. Since more than half the couples lived together above four years, while in the majority of cases the duration of marriage exceeded seven years, it would be rash to surmise that people are forming risky and unstable unions in full view of their easy dissolution.

Nor is divorce usually sought in order to remarry. In Connecticut, during a period of years, the number of divorced persons married was about 40 per cent of the number divorced in the same time. In Rhode Island, from 1889-96, the proportion was only 28 per cent. Remarriage is one of those cases in which, as Doctor Johnson put it, "hope triumphs over experience," and it is not at all certain that the rate for divorced persons much exceeds that for widows and widowers of the same age. Certainly the restrictions that many states are imposing on remarriage do not seem to affect appreciably the divorce rate.

It is doubtful if one divorce in twenty is obtained by migrating to a "liberal" state. A "divorce colony" at Sioux Falls or Cheyenne obscures the fact that divorce has descended among the plain people, few of whom can afford to seek relief outside their own state.

It is erroneous to suppose that the explanation and cure of the drift toward divorce is to be found in legislation. Twenty years ago Professor Willcox, on the basis of the most rigid investigations, declared, "The immediate, direct, and measurable influence of legislation is subsidiary, unimportant, almost imperceptible." Dr. Dike, the secretary of the National League for the Protection of the Family, said, "The direct influence of lax laws in producing the great increase of divorce in the last forty years is relatively small." Moreover, the tendency of legislation for the last twenty years has been decidedly in the direction of greater stringency.

The failing grip of the legal institution need not entail a corresponding abandonment of the hallowed ideal of marriage as a lifelong union. If the iron clamp be

loosed, it does not follow that the silken cord is weaker. Although in thirty-eight years the resort to divorce has become three times as frequent, there is little to show that couples are taking the vows of wedlock with any other desire or expectation than union till death. Nor can we conclude that wronged spouses are less faithful than formerly to this ideal. The loveless couples of the "good old times" appear to have been held together by public opinion, religious ordinance, ignorance of a remedy, the expense of divorce, or the wife's economic helplessness, rather than by a heroic fidelity to an ideal.

In nineteen cases out of twenty the marriage purports to be shattered by some flagrant wrong, such as adultery, cruelty, drunkenness, desertion, imprisonment for crime, or neglect to provide. Nevertheless, the growth of divorce cannot be taken as a sure sign of increasing depravity on the part of husbands or wives. Often the "cause" that figures in the record is a screen for some deep-seated irritant. Physicians declare that many marital troubles have their roots in the pathology of sex, and do not argue moral fault on the part of either spouse.

Some of those who speak with utmost positiveness on the divorce problem betray a strange confusion of thought. A new legal cause for divorce is stigmatized as "an assault upon the marriage compact," as if divorce ever broke up a happy home. The clergyman who characterizes a divorce law as "a statute undermining the very substructure of society" implies that nothing but coercion holds man and wife together. One divine, with unconscious cynicism, denounces divorce as "threatening the very foundations of the home!" Another, who beseeches us to "protect the poor from the evils of loose divorce statutes," evidently conceives permission to separate as a malignant entity going about rending harmonious households. One judge pictures it as "the antipodal foe of marriage," which "invades the home and defiles its sanctities," under the curious notion that

there are any "sanctities" left in the home made hideous by brutality or drunkenness. Still more bizarre is the idea that by denying release to the mismated we shall "restore the purity of our homes." Evidently there is wide-spread failure to distinguish between symptom and disease.

In view of the fact that two-thirds of the divorces are granted to the wife, it is safe to say that the majority of them would not be sought but for the access of women to the industrial field. Between 1870 and 1900, while population doubled, the number of working women trebled. No doubt the openings for women multiplied yet faster. More and more we live in cities, and the city gives the woman her chance. The smallness of the alimony contingent,—for only one wife in eight obtains alimony,—and the presence of 55 per cent of all divorced women among the bread-winners, indicate that in most cases the wife who seeks a divorce expects to support herself. Hence, the better her prospect of solving the bread-and-butter question by her own efforts, the oftener the aggrieved wife will pluck up courage to break her fetters and face the world alone. Possibly the fact that in the north the wife takes the initiative in 71 per cent of the cases, while in the south the wife seeks release in only 55 per cent hinges on the difference in the industrial opportunity for women in the two regions.

It has been noticed that the communities in which early marriage is the rule are the most free from divorce. The reason is that early subjection to the marital yoke hinders the woman developing to the full stature of her personality. Said Professor Willcox:

> Only sixteen to twenty years of age when she passes out of the control of her father and mother into that of a husband, with no taste of freedom intervening, with mind and character so unformed as easily to be brought into harmony with or submission to her husband's, with no way of escape open to her after marriage, whatever the law may say, what wonder that the peasant woman of Russia, Ireland, or elsewhere shows little inclination to divorce.

Now, in the United States, the age at which women marry is steadily rising. In Massachusetts the average is about twenty-five years. In Russia nearly three brides out of five are under twenty. With us, thanks to woman's chance to earn, only one-ninth of the girls under twenty are married. Two-fifths of the girls between the ages of sixteen and twenty-four are bread-winners, and after the seven years of independence which is the lot of the average young working woman, they enter upon wedlock with a high spirit that will not brook subjection.

Nor is it to be forgotten that specialized industry in a way unfits a young woman for marriage by weaning her from the domestic arts. The girl married at eighteen directly from the parental home is more likely to make and keep a home happy than the girl who marries at twenty-five after some years in factory, store, or office. Without her old housekeeping knack, and despising the crude work of the kitchen, the latter too often fails to make home comfortable, and the couple may sink into a misery which ends in domestic shipwreck. The demoralizing reaction of home slackness is brought out by studies made by Cadbury in Birmingham. There the proportion of sober and steady men is nearly twice as great in families where the wives do not work out as in homes presided over by employed women.

Incessantly the factory planes away the economic basis of the family. In the time of our grandmothers the home was the seat of a score of productive processes, and the ideal wife was the "virtuous woman" celebrated by Solomon. She might not be a "soul-mate" to her husband, but she was a prop to the prosperity of the household. Now that the machine has captured most of the domestic processes and the middle-class home is sustained by the earnings of the husband, the wife, from a helpmate, has become a luxury. If, now, there is a rift in the lute, the husband becomes aware of carrying

a burden, and resents things that are overlooked when the wife is a true yokefellow.

On the other hand, the capable, unencumbered woman, who finds herself doomed by social convention to be supported in idleness by a husband who can earn, perhaps, little more than she can, is also making a sacrifice—a sacrifice which she will chafe under in case the marriage fails to satisfy her affections.

In a word, outside of the manual-laboring class, the old economic framework of the family has largely fallen away, leaving more of the strain to come on the personal tie. Husband and wife are held together by love, conscience, and convention, but very little by that profitable co-partnership which once contributed so much to the stability of the home.

The intellectual progress of women swells the demand for matrimonial surgery. Today two ideals of the family are struggling for mastery—the old despotic family, of Roman origin and ecclesiastical sanction, based on the authority of the husband and the merging of the wife's legal personality in his, and the democratic family, of Germanic origin, based on the consenting and harmonious wills of two equals. The one goes naturally with pioneering, agriculture, and warfare, which put men to the fore; the other goes with industry, peace, and city life, which add to the consequence of women. In proportion as women escape from abject mental dependence on men and find a point of view of their own, they spurn patriarchal claims and expect marriage to be the union of equal wills. What with more girls than boys in the high schools, and half as many women as men in college, it is not surprising that women more and more enter marriage with a connubial ideal of their own. Nevertheless, the men they wed—many of them—cherish the conviction that the husband is the rightful "head" of the family. The resulting clash of ideals is none the less disastrous because it is only an incident of a transition process in social evolution.

The intellectual ferment of our time weakens the grasp of the social institution upon the innocent individual. The voice of authority, whether it appeals to precedent, to doctrine, or to Holy Writ, is little heeded. No longer is a harsh requirement or a rigid arrangement able to hedge itself about with a divine sanction. The question "*Cui bono?*" is in the air. Any policy that crushes the individual or blocks his pursuit of happiness is challenged and obliged to produce the best of credentials. The feeling that "marriage is for man, not man for marriage," is, along with heresy trials and contempt of the courts, an outcome of the reigning spirit of criticism. Now, as ever, law-maker and theologian stand ready to bind on hapless persons heavy burdens and grievous to be borne,—for the callousness of the well-wed to the woes of the mismated passes all belief,—but public sentiment is master today; and public sentiment, taking the promotion of happiness as the end of human institutions, flinches from keeping the unhappy locked together when no demonstrable harm will result. Those who would turn this sentiment against divorce must appeal to sociology rather than to dogma.

An inevitable by-product of the liberation of women from men, and of both from tradition, is a rank individualism which makes a lasting union impossible, and thus defeats the end for which marriage exists. No doubt much of the infidelity that purports to lie at the root of a sixth of the cases of divorce is an expression of this exaggerated self-will. Let it be remembered, however, that no emancipation ever takes place without producing evils of this kind. When independence and the assertion of rights are in the air, there are sure to be some who become acutely aware of their rights before they realize their duties. The marriage of persons of a dilated ego, unwilling to bear or sacrifice for the sake of preserving the union, cannot but result in disaster.

A. BERNSTEIN

It has been calculated that if the movement toward divorce retains its present velocity, in forty years one marriage in four will end by divorce, and in eighty years one marriage in two. No one who understands the vital rôle of the family in a healthy society anticipates any such deplorable outcome. Already there are in sight certain influences that are likely to moderate the headlong movement. The industrial and intellectual emancipation of women will, of course, complete itself; but the old despotic ideal of the family will die out of men's minds and cease to be a breeder of conjugal discord. The distrust of institutions can hardly go much further. It is likely that the public, as it wins a deeper insight into the services of the family to society and to the race, will feel less sympathy with the wrong-doings, weaknesses, and whims that shatter it. Individualism, too, is probably at its zenith. In the discussion of human relations we are likely to hear less of the radical note and more of the ethical note. In proportion as the emancipated are led to an ethical view of life, they will cease to regard marriage simply as a fair-weather arrangement with personal happiness in constant view. They will recognize its inexorable demands for patience and self-control, for loyalty through sorrow and sickness, through misfortune and the aging years.

The fact that accelerated divorce is produced by the modern social situation rather than by moral decay does not make it any less the symptom of a great evil. That one marriage in ten openly fails, calls for vigorous effort to lessen the number of bad marriages. The school should instruct girls in the domestic arts which supply the material basis of the home. There should be systematic instruction of youth in the ethics and ideals of the family. The fact that the likelihood of divorce is in inverse proportion to the length of time the parties were acquainted before marriage suggests the wisdom of requiring a formal, but not public, declaration of intention to marry some weeks before a marriage license

will be issued. Law or custom ought to devise some means of protecting pure women from marriage with men infected from vice. A way may be found to detect and punish the husbands who desert their families. Finally, the fact that intemperance figures in nearly a fifth of the divorces ought to invigorate the temperance movement.

MARRIAGE[1]

Let us pause for a moment to consider the point which we have reached. The permanency of marriage is still intrenched in the laws and usages of society, and deeper down in the parental instinct; but habits may be unlearned, and even strong instincts may become uncertain, unless supported by intellectual conviction, and a theory of marriage justifying the permanence of the relation at present is nowhere in sight. The authority of the Church as far as it extends is useful as a dyke against the flood. It is a restraining but not a constructive influence. While if we turn to the philosophers, especially the philosophical systems of recent times, we shall get but scant help from their teachings. What has Bergson to say that is helpful in solving the marriage problem, or Bertrand Russell, or the experimentalists? As for the great German philosophers, the two who are reputed the most ethical, Kant and Fichte, are quite impossible as guides. Kant's views on marriage are pitched on the lowest scale; Fichte's are curiously, ineptly romantic. Hegel's opinions on the social institutions are conservative, but one must swallow intellectual absolutism in order to be content with his reasons.

To know what we lack is the *sine qua non* of progress. There is no ethical theory of marriage in existence at present that serves. This must be set down plainly, decisively, with full knowledge of what

[1] From article by Felix Adler, Professor of Social and Political Ethics, Columbia University, New York. Hibbert Journal. 22: 20-43. October, 1923.

is implied in the statement. By an ethical theory I understand one that shall respect and even heighten the claims of the individual, while at the same time proposing a supereminent end to which the private happiness may and should be subordinated.

The issue lies between the ideals of permanence and impermanence. We are bound to decide which of these two ideals we sanction. Permanence becomes peremptory if a truly objective end can be proposed which the individual will recognize as superior to his private ends, which he will embrace as being indeed his own dearest end, in the pursuit of which his existence becomes worth-while in his own eyes. An objective end is one that stands on its own feet. An objective end is like a beautiful work of art that has a value of its own independent of the subjective state of the individual who created it, of the pleasure he experiences or the pain he suffers in making it. It has a certain externality apart from its creator, and yet is intimately connected with him, for it expresses a trans-subjective value which he is capable of conceiving and to a certain extent embodying. No human action can be without a motive; the motive in this case is obedience to the impulsion from within, and the satisfaction is found in giving free course to the inner constraint, despite the distress or even the anguish by which it may be accompanied, and despite the incompleteness of the result. Or, to put it more positively, the objective end, and with it the permanence of marriage, will appeal in the long run to those in whom activity is predominant—they are, in my use of the word, the ethically-minded; while impermanence will be favored by those in whom recipiency is predominant, who reflect in all their relations and all their exertions upon the quota of pleasure which they may derive therefrom.

To live in activity as such directed toward a worth-while object—the worth-whileness of the object radiating into the activity, even when the object is not attained,

is one state of mind; to treasure the pleasantness of one's own feelings is a different state of mind.

Turning now to the arguments adduced by the advocates of impermanence, we find that we have to deal first, with their conception of freedom; secondly, with the meaning they attach to self-expression; and thirdly, with their dictum that where love ceases marriage should cease. I referred in the beginning to the young married woman who sought a divorce because she could not endure a binding tie, and to Brandes's exasperation as attributable to the same cause. Freedom in these instances means the absence of binding ties, of constraint in any form. To indicate briefly my own standpoint, I will lay down that *binding ties are welcome in so far as they are necessary to unbind what is highest in us.* Those binding ties which do not serve this purpose, like restrictions on the freedom of conscience, the freedom of speech and the like, are censurable, and social progress largely consists in undoing them. The other kind of binding ties are to be affirmed, and social progress largely consists in making them more binding, or one might say automatically effectual. Positive freedom is an expression of the essential self in us; the question is whether the tie, which permanently binds one man to one woman, is indispensable to freedom thus conceived. The issue is between wild freedom, neurotic freedom, and positive freedom.

Next, as to self-expression. I hope it will not seem too pedantic if I distinguish three aspects of the self,—not of course three selves, but three aspects of the self—the lower, the higher, and the highest, and predicate as corresponding to them the minor ends of a human being, the major ends, and the maximum end. As to the minor ends, the animal ends, those which, broadly speaking, we share with the inferior creatures, no one I imagine will deny that in case of collision they should give way to the higher ends. To advocate impermanence in

the sex relation for the sake of a more varied gratification of the sex instinct would be to reduce man to the animal level, since in a life thus lived, a disorderly, dissipated life, the mind, being uneasily set on sense gratification, the higher faculties, those of the thinker, the artist, the man of affairs, would stand no chance; the lower, grovelling purposes would fill the horizon, the things that count from the human point of view would be out of the picture. Moreover, the general mental instability that goes with such an existence is unfavorable to that concentration which is so essential to any valid achievement in art or science or business. The unbinding of the animal instincts blocks the way to the exercise of the higher faculties. The binding of the lower is necessary in order that the higher may act. This, at least, is indisputably a condition of freedom, and it is proper that a certain coercion in this particular be exercised by society—that laws, for instance, against crime be enacted, laws which the more developed human beings voluntarily consent to and are never even tempted to infract, but which are useful and necessary to restrain the weaker brethren.

But the position for which I specially contend is that not only the lower should give way to the higher interests, but that the higher, the major ends, should give way to the highest, the maximum end, in case of collision; and this is the pivot on which, in the last analysis, the issue between impermanence and permanence turns. This is the point where the harmful ambiguity of what is called the right to self-expression has to be exposed.

The right of self-expression, as commonly understood, implies untrammelled opportunity for the development of one's talents and tastes, of one's intellectual and æsthetic—that is, of one's higher—faculties, of those that subserve the major ends of life. But the major ends must yield precedence to the maximum end,

the maximum end being the affirmation, not of the one or the other partial aspect of the self (the intellectual or æsthetic), but of the self as a whole, of the unique personality as postulated in others and in oneself. And this involves respect for the unique personality of others, and as corollary the preservation of others so far as they depend on us for the sake of their unique personality. An instance in point is the action of a youth who was offered the chance of a university education, and who made what for him was the grand refusal, because his aged parents were dependent on him for support, and there was no one else to take his place. He sacrificed his intellectual ambitions, perfectly legitimate as they would have been in other circumstances. He sacrificed a major end for the sake of the maximum end, he sacrificed his higher self, so to speak, in order to express his highest self, and such self-expression has the character of sublimity.

The same applies to mothers in relation to their children. No one nowadays questions the right of a woman to follow any vocation to which she is inclined, and for which she believes herself fit. Astronomy, chemistry, among the sciences, law, music, literature, the banking business, are a few of the walks of life in which women have essayed their power. No one questions their right to go as far as they possibly can. But neither for women nor men is it possible to follow two vocations at the same time. For every real vocation is exigent, and is becoming more and more so. It is desirable to have an avocation alongside of the vocation, but it is not practicable to have two vocations, to serve two masters. Goethe tried it and failed, and he condensed his experience, toward the latter part of his life, in the words: Work and renounce (*Entsagen sollst du, sollst entsagen*): work assiduously in thine own line, and try to develop thy talents and tastes in other directions only to the extent that is consistent with the most efficient

performance of thine own task. Now motherhood is, or at least in the way of becoming a true vocation. It draws upon various sciences—on chemistry, physiology, on psychology, on the applied arts, on applied ethics, the theory of punishment for instance; and besides, since the family is the foundation of the state, and the right ordering of the state reacts upon the family, the wiser motherhood implies active participation in public life. The mother is no longer restricted, or supposed to be restricted, within the four walls of her house, but her interests and activities are nevertheless vocationally focalized upon the life-problems of the members of the group which centers in her as the mother. The single woman may choose any profession she pleases, but a married woman has her profession cut out for her. She may continue to have her avocation alongside, her music for instance, but if she have children she can hardly expect to be a professional musician, unless indeed she is willing to delegate the care of her children to paid assistants. A married woman, therefore, may have to sacrifice the higher interests of intellectual and æsthetic development, to forego the development of certain talents and tastes in order to reverse the maximum end, which is regard for the personality of those who depend on her. The question, here as elsewhere where self-expression is raised as an issue, is which of your selves do you desire to express, the higher or the highest?

But how do we stand toward the dictum that love alone consecrates the sex life? As against mercenary marriages, the *mariage de convenance*, marriage for wealth or title or the like, it is obviously valid. I have said above that absolute congeniality is a dream, but a certain fund of congeniality, a certain intimate attraction there ought to be to warrant the hope of augmenting and perfecting it later on. But before we agree to the inference that where love ceases marriage should cease, had we not better pause to inquire in what sense

the word love is used. It cannot mean the passion of the libertine, for in that case why speak of marriage? Illicit relations are avowedly temporary. The understanding on either side is that there shall be no responsibility, and, therefore, no permanence. It is just the absence of responsibility that appeals to the lovers of the wild freedom. It cannot surely mean that marriage is to cease when the physical charms of the woman diminish, a change which often takes place after childbirth, just at the time when the fact of responsibility stands out most unmistakably. If that were the meaning, then marriage would be a mere cloak for promiscuity. But the plea that marriage should cease when love ceases is put forward by finer natures, and in their case it is based on an æsthetic ideal of life.

Let me here introduce a word as to the difference between the æsthetic and the ethical point of view. The æsthetic temperament is distinguished from the ethical in that it seeks to enjoy perfection here and now, while the latter endeavours to create perfection, and is willing to suffer the pain of imperfection while engaged in the effort of creation. Forasmuch as a person is what I have called ethical-minded, it does not follow that he is insensitive to beauty, to the harmonies of sound, color, line, etc., achieved by art. He will delight in them as recreations of the spirit, as stimulations for his proper task, as foreshadowings of those harmonies which the ethical ideal requires that he seek to actualize in human lives. The æsthetically-minded person feeds on the perfections of art, reposes on them as finalities, and when, leaving the domain of pure art, he faces the problem of associating with his fellow-beings, who are not as ductile to the artistic touch as sounds and colors and lines, he refuses to take his share in the slow process of transforming human nature, and invents instead an illusory art of living on the plan of selecting for companionship those natures which are or seem to be already

congruous with his own, and in whose society he hopes to enjoy even now the perfect harmony. Enjoyment of perfection on the one hand, working for the creation of perfection on the other, is the distinction.

As applied to the relation of men and women in marriage the æsthetic ideal may be defined as the ideal of mutual complementation, deficiency on one side to be rounded out by quality on the other; insights, intuitions, delicacies on the one side to be compensated by stronger intellectual outreachings, volitional persistences, etc., on the other, the two natures thus falling naturally and increasingly into tune, and each experiencing the more complete expression of the individual self in consequence of the action upon it of the other self. Where, however, a mistake was made in the choice, where the partner fails to come up to expectations, where incompatibilities, at first unnoticed, appear after marriage—and it is precisely these incompatibilities that appear after marriage which constitute the real problem—then from the æsthetic point of view, and in the name of love, the marriage is to be dissolved, and the ideal partner sought elsewhere—a wild-goose chase if ever there was one.

From the ethical standpoint, the notion of mutual complementation as thus put forward must be strenuously combated. Just because it is so fine, so fascinating, and yet does not ring true, the falseness in it, the perils which it harbors, must be shown up. A certain objective end is to be pursued by the married partners greater and more worthwhile than the finest mutually egotistic satisfactions. My thesis is that even in the most fortunate marriages a residue of incompatibility remains; nay, I go so far as to say that as individualization proceeds, idiosyncrasies will develop more intimate and difficult to match. My thesis further is, that wherever there is friction the conflict of impulses and desires can only be overcome by pointing to some over-arching super-eminent end, some commanding purpose which the

persons concerned alike recognize, effecting unity through cooperation in the effort to accomplish that purpose. This holds good in regard to the friction between the social groups, in regard to the conflicts of nations, in regard to the incompatibilities that appear in marriage. There must be some over-arching end in view clearly discerned; the absence of such an end from the minds of men is the radical ethical weakness of our age. Cooperation, then, not complementation! Complementation, at least as the idea is understood, is a compact for the exchange of egotisms. I can best gratify my selfish purpose by ministering to yours, and you in turn by ministering to mine. The selfish purpose in the case considered is the expression of the higher self, not of the highest. When we look at the highest we find that the satisfaction which it craves, no longer subjective, consists, as has been said, in the production of an independent good which has significance in the nature of things, aside from the pleasures and pains of the beings that are engaged in producing it. And cooperation in the effort which is subservient to that end is the keynote of conjugal love in its purest, most spiritual aspect. We love the person who is most precious to us in the sense of making our life most admirable, in securing self-respect on the loftiest terms. As fathers or mothers there is only one person in the world who is indispensable to us in this way, and this is the woman or the man with whom we are associated in marriage; for as fathers and mothers the attainment of our highest self-respect depends on our relation to the child, and as there is only one person associated with us in giving life to the child, there is no other upon whom we can count to render us this supreme service.

But let me define more exactly the over-arching end to which marriage is devoted, the task which the man and the woman are to fulfil jointly. Marriage is the organ for the perpetuation of the spiritual life, which,

so far as we know, appears in the finite world only in human beings. The spiritual life is a feeble flame that needs to be continuously replenished, and the vehicles of it, men and women, how frail are they, and how brief is their hold on existence! The trees of the forest survive us, the rocks outlast us by millenniums. If it were not for reproduction, this human race of torch-bearers would become extinct, and with it the flame of which it is the bearer. Every married pair undertakes to fulfil on its part the task of humanity. This is the obligation which all who enter into the marriage relation should have before their minds. But the task is not only to perpetuate the spiritual life, but to enhance it—that is, to extend the reign of spirit on earth, to heighten its quality, to produce in human relations an image of "the Kingdom of Heaven"—that is, to transfigure as far as may be the natural relations between human beings into spiritual relations. Now the spiritual relation itself is nothing more than an ideally organic relation, one in which the organic idea, whereof we have no adequate example whatever, either in the animal or the human world, is conceived as perfectly realized—that is to say, a relation of distinctively differentiated functions so interacting that each in its exercise promotes the absolutely efficient exercise of the rest, with which it is systematically co-related. The conclusion is that marriage is spiritualized when each of the two sexes so acts as to draw out the distinctive sex quality of the other in respect to mind and character, and in so doing achieves its own—that is to say, when the essential womanliness of the one elicits the essential manliness of the other, and conversely, each in so doing becoming possessed of its own essential and distinctive quality. The formula of the spiritual relation is: So act as to elicit the best in others, in the process eliciting the best that is potential in thyself.

Those who believe that a theory of marriage can be

constructed without reference to the child ignore the peculiar good which it is the prerogative of parents to bestow upon children, and the peculiar ethical reaction which they get in return. A word as to this. In all our dealings with our fellow-men the ethical view requires that we attribute to them a certain potential worthwhileness, apart from any actual value which they may have, and even in despite of their being actually nuisances and impediments to progress. The ethical view requires us to consider no fellow-man as hopeless. It insists always on the potential in defiance of the actual. It is this that forbids us to exterminate even degenerates or hardened criminals; it is this that led Jesus to find disciples among harlots and tools of the Roman system of extortion (the publicans). Humanity has worth apart from value, worth being the potential quality. Now parents—the mother especially, but the father also more indirectly—instinctively hold the child unspeakably worthwhile, in advance of any value which it could possibly claim, in advance of any deserving on its part. To the child this being held so precious at the outset of life gives a sense of security, a sense of being at home somewhere in the world. It affords a kind of anchorage to which to attach its moral personality; while for those parents at least who transcend their instinct impulses, the feeling they have for the child is a support for their ethical attitude toward human beings in general. Never can the good-will of trained teachers in a public institution, or the fraternity feeling upon which socialism relies, take the place of this preferential relation of parents and children and the ethical experience into which it may be developed.

Concentration, I remarked above, is indispensable to the thorough performance of any great task—in science, in the arts, in affairs; it is certainly no less indispensable in the sublime task of searching out the essential personality of a woman, the essential personality of a man,

of penetrating to the roots of the other's self, of gripping the uniqueness that so hides itself, though it is there, at least the idea of it—of bringing it to the surface, of making it an effectual *idée-force*. Concentration, therefore, on one woman or on one man, in other words permanence in the marriage relation, is the spiritual *sine qua non*. This searching for the hidden, divine thing by each in the other, with the assurance that though elusive it exists, this yearning toward it, this foreknowledge that the complete union between the two souls can only be achieved at the summit of the nature of each—this, to my mind, is love, as it is known at its truest. And because the search, in the nature of the case, is perpetual, therefore the union must be perpetual. And we may say to those who insist that when love ceases marriage should cease: You are right, only that what you say is a truism, for it is in the nature of the thing that properly appropriates the word love that it shall never cease. The circumstance that it cannot cease is the very test and touchstone by which it may be distinguished from its fair or foul semblances.

I have set out in these lectures to apply a certain spiritual ideal to the vital problems of modern life, of which marriage is one. But I shall now be told that I have travelled too far away from the actual facts, and that the ideal is too airy to be applicable. Take the case, for instance, of a superior man who finds himself tied for life to a frivolous woman, a woman of inferior mental capacity, who is dull to all the things that really interest him—can there be spiritual companionship between these two? And will not the man, supposing that he is courageous enough to disregard the restraints of convention, consider himself justified in putting an end to the relation? The case may easily be reversed, the woman being the superior, but to avoid circumlocution let me adhere to the first way of putting it. Or even suppose that the two parties start on a fairly equal level,

but that the one develops more rapidly than the other, and outdistances the other. Referring to what was said above as to the difference between the higher and the highest levels, my reply is that on the higher level companionship may not be possible, but that on the highest, the spiritual level, it is. For spiritual companionship is a relation of personalities as a whole, and in the sex relation it is not just the intellect of the man that is to be mated with the intellect of the woman, but the integral man to the integral woman. And while this relation does not require the *development* of personality on either side (the manifestation of worth in terms of value), nevertheless it implies fundamentally, and before all and above all, respect for personality, and the discarding of either by the other is contrary to such respect.

Moreover, the superior man, of whom we were speaking, if he go into the matter searchingly enough, may have a remarkable experience. He may, for example, find the tables turned against himself, he may be startled into inquiring as he never did before into the motives with which he married this woman. Was it because she was good-looking, or had certain pleasing ways, or in the expectation of comfort and caresses, or because it flattered his vanity to see her preside over the hospitalities of his house? He may be asking whether he himself ever had any really spiritual ideal of marriage, any just conception of the office which a wife might fulfil for her husband, and whether he on his part had ever attempted to render the correlative office, and if not, whether it was to be wondered at that the relation should become mean or unbearably commonplace. And then I imagine that our friend the superior man may make a somewhat humbler estimate of his superiority, may see a vision of the possibilities of the marriage relation such as had never dawned on him, and this vision will undoubtedly change his conduct, producing on his side a new attitude toward the wife which

possibly may meet with a response. For not infrequently we find that people with whom we habitually associate show to strangers a certain fineness in their nature which we never see, because we have never called it out, because we have been too precipitate in judging what may or may not be expected of them. But if there be no response, the vision itself and the challenge of it, the spiritual growth which it induces, will be a compensation and consolation for what might otherwise have been sheer martyrdom.

The so-called conservative is one who advocates the *status quo* in regard to the marriage institution. I am not to be ranged on that side. I believe in conserving the good in those institutions which have been transmitted to us by our forbears, but believe also that the good can only be preserved by transforming it into the better. The good in marriage is the permanence of it, the unity of the two wills. But this unity of two has often been achieved by the suppression of one. Unity is indispensable for the advantage of all concerned, especially for the children, but it must come by consent, and that, as has been shown, can only be achieved by directing both wills toward an objective, over-arching end. The right of woman to the most complete mental development possible, which was refused in the past, must be insisted on, not only in the interests of woman but of society in general. The outrageous double standard, already rejected in theory, must give way in practice.

There are many other evils that need to be corrected; for instance, the hasty marriages of young people who drift or rush into a relation of whose responsibilities they have not the slightest conception. These should be prevented by law and education. The indictment framed against what Nordau petulantly called the "marriage lie," against bourgeois morality and the institution of marriage as a part of it, is also in many respects true. The comfortable middle class extol the family as the

foundation of all the virtues, and yet they take no effective measures to abolish the slums in which the primary conditions of a decent family are lacking. Bourgeois morality extols the chastity of woman, while the low pay of female wage-earners puts temptation in their way, not indeed irresistible temptation, as is sometimes extravagantly stated, yet often difficult to resist. Moreover, the cities reek with the social evil, and infidelities and brutalities in marriage are not infrequent, of which women are physically and morally the victims. Such evils as these are not to be extenuated by the defenders of marriage. They are in part the result of the present economic system, with which, however, the permanence of marriage is not bound up, in part the result of dark forces in human nature—appetites, ugly passions, streaks of primitive ferocity—with which every ideal has to contend. In any case, impermanence in marriage would not remedy these evils, but exacerbate them, and if it were adopted women in particular would be the greatest sufferers.

Also it should be said that there is another side to the picture. The increase of divorce is a grave symtom; but if the law were changed to permit the dissolution of marriage at will, it is probable that the greater number of married couples would refuse to avail themselves of it—the parental instinct may be relied on to that extent. And again if there be no absolutely perfect marriages, there are many in which a degree of ethical development as well as of happiness is attained that is to be met with in no other human relationship. The common life engenders common sympathy. A man must be very near the level of the brute who does not feel a certain awe, and gratitude mingled with humility, toward the woman who, in a kind of crucifixion, gives birth to their first child. The solidarity of husband and wife toward the outside world tends to unite them. Sorrow, as at the grave of a beloved child, grief, as over

an unfilial son or daughter, draw the tie closer, and make it sacred. And the common experiences tend to promote not only sympathy, but mutual understanding, the ability to enter into the state of mind of the other, to live in the life of the other. For the sorrow of a mother, for instance, in the case of an unfilial son or daughter, is unlike that of the father. The man may be more hurt in his pride, the woman wounded in a deeper, more elemental feeling. Add to this that close companionship has at least the ethical advantage of counterbalancing egocentrism. Single men and single women, when living an independent life, are apt to be more or less shut up in the circle of their own ends, their thoughts are more apt to revolve about the self. In marriage and the family the center of gravity is more apt to be transferred from the self to the others, thereby counteracting extreme individualism, producing, it may be, only an enlarged selfishness, which, however, is likely under the influence just mentioned to turn into something better.

As to extreme cases, divorce is, and in view of the present state of public opinion must still be, the legal remedy; separation, but without remarriage, is the ethical counsel of perfection. But whatever the legislation on the subject of divorce may be, or whatever charges may be effected in it, the object should be to strengthen, not to weaken, the presumption of permanence. To admit incompatibility as a cause would be to multiply incompatibilities, to encourage the self-seeking man or woman to regard every difference as intolerable; while to grant divorce, as has happened recently, a second, third, or even fifth time, is scandalous.

The outcome of the discussion may be summarized in the following statements:—

1. The interests of the child—that is, the spiritual interests of future humanity—must be raised to prominence in the theory of marriage as against the prominence at present unduly accorded to the happiness of the

man and woman—the objective end must prevail over the subjective.

2. Binding ties are to be welcomed in so far as they unbind in man the higher and the highest.

3. Even the higher itself must be subordinated to the highest, the major ends to the maximum end in case of collision.

4. It is true that marriage should cease when love ceases. But it is in the nature of that love which deserves the name not to cease. We love that which is lovable. That which is most lovable is the secret beauty in another's nature. Love is the feeling evoked by anticipation of union with that beauty. It constantly recreates itself and is intensified even while thwarted. It is a longing anticipating its satisfaction; it is the constant unwillingness to be separated from the object of its quest.

DIVORCE[1]

How can we call ourselves a Christian people, if we so flagrantly, shamelessly, legally violate a fundamental law of Christianity? For if the sanctity and indissolubility of marriage does not constitute a cardinal principle of Christianity, I am at a loss to know what does. What mockery to call those homes Christian where the mother's heart is broken, the father's spirit is crushed, and where the children cannot cling to one of their parents without exciting the jealousy or hatred of the other!

Marriage is the most inviolable and irrevocable of all contracts ever formed. Every human compact but this may be lawfully dissolved. Nations may be justified in abrogating treaties with each other, merchants may dissolve partnerships, brothers will eventually leave the paternal roof, and, like Jacob and Esau, separate. Friends, like Abraham and Lot, may be obliged to part company; but, by the law of God, the bond uniting hus-

[1] By James Cardinal Gibbons. Century. 78: 145-9. May, 1909.

band and wife can be dissolved only by death. No earthly sword can sever the nuptial knot which the Lord has tied; for, "what God hath joined together, let not man put asunder." [1]

It is worthy to remark that three of the Evangelists, as well as the Apostle of the Gentiles, proclaim the indissolubility of marriage, and forbid a wedded person to engage in second wedlock during the life of his spouse. There is, indeed, scarcely a moral precept more strongly enforced in the Gospel than the indissoluble character of marriage validly contracted.

The Pharisees came to Jesus,

tempting Him, and saying unto Him: Is it lawful for a man to put away his wife for every cause? Who, answering, said to them: Have ye not read that He who made man from the beginning, made them male and female? And He said: For this cause shall a man leave father and mother, and shall cleave to his wife, and they two shall be one flesh. Therefore now they are not two, but one flesh. What therefore God hath joined together, let no man put asunder. They say to Him: Why then did Moses command to give a bill of divorce and to put away? He said to them: Because Moses, by reason of the hardness of your heart, permitted you to put away your wives; but from the beginning it was not so. And I say to you, that whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery: and he that shall marry her that is put away, committeth adultery.[2]

Our Savior here emphatically declares that the nuptial bond is ratified by God Himself and hence that no man, nor any legislation framed by men, can validly dissolve the contract.

To the Pharisees interposing this objection, if marriage is not to be dissolved, why then did Moses command to give a divorce? Our Lord replies that Moses did not command, but simply *permitted* the separation, and that in tolerating this indulgence, the great lawgiver had regard to the violent passion of the Jewish people, who would fall into a greater excess if their desire to be

[1] The reader should bear in mind that the quotations from the Bible in this article conform verbally with the Douay version.—The Editor.

[2] Matt. xix : 3-9.

divorced and to form a new alliance were refused. But our Savior reminded them that in the primitive times no such license was granted.

He then plainly affirms that such a privilege would not be conceded in the new dispensation; for, he adds: "I say to you: whosoever shall put away his wife, and shall marry another, committeth adultery." Protestant commentators erroneously assert that the text justifies an injured husband in separating from his adulterous wife, and in marrying again. But the Catholic Church explains the Gospel in the sense that, while the offended consort may obtain a divorce from bed and board from his unfaithful wife, he is not allowed a divorce *a vinculo matrimonii,* so as to have the privilege of marrying another.

This interpretation is confirmed by the concurrent testimony of the Evangelists Mark and Luke, and by St. Paul; all of whom prohibit divorce *a vinculo,* without any qualification whatsoever. In St. Mark we read:

> Whosoever shall put away his wife and marry another, committeth adultery against her. And if the wife shall put away her husband and be married to another, she committeth adultery.[1]

The same unqualified declaration is made by St. Luke:

> Every one that putteth away his wife and marrieth another, committeth adultery; and he that marrieth her that is put away from her husband, committeth adultery.[2]

Both of these Evangelists forbid either husband or wife to enter into second wedlock, however serious may be the cause of their separation. And surely, if the case of adultery authorized the aggrieved husband to marry another wife, those inspired penmen would not have failed to mention that qualifying circumstance.

Passing from the Gospels to the Epistle of St. Paul to the Corinthians, we find there also an unqualified pro-

[1] Mark x : 11, 12.
[2] Luke xvi : 18.

hibition of divorce. The Apostle is writing to a city newly converted to the Christian religion. Among other topics, he inculcates the doctrine of the Church respecting matrimony. We must suppose that as an inspired writer and a faithful minister of the word, he discharges his duty conscientiously, without suppressing or extenuating one iota of the law. He addressed the Corinthians as follows:

> To them that are married, not I, but the Lord commandeth that the wife depart not from her husband. And if she depart, that she remain unmarried, or be reconciled to her husband. And let not the husband put away his wife.[1]

Here we find the Apostle, in his Master's name, commanding the separated couple to remain unmarried, without any reference to the case of adultery. If so important an exception existed, St. Paul would not have omitted to mention it; otherwise he would have rendered the Gospel yoke more grievous than its Founder intended.

We must, therefore, admit that, according to the religion of Jesus Christ, conjugal infidelity does not warrant either party to marry again, or else we are forced to the conclusion that the vast number of Christians whose knowledge of Christianity was derived solely from the teachings of Saints Mark, Luke, and Paul, were imperfectly instructed in their faith.

Nor can we expect that St. Matthew gave to the married Christians of Palestine a privilige which St. Paul withheld from the Corinthians; for then the early Christian Church might have witnessed the unedifying spectacle of aggrieved husbands seeking in Judea for a divorce from their adulterous wives which they could not obtain in Corinth; just as discontented spouses, in our times, sue in a neighboring state for a legal separation which is denied them in their own. Christ is not divided, nor do the Apostles contradict one another.

The Catholic Church, following the light of the Gospel, forbids a divorced man to enter into second espousals

[1] I Cor. vii : 10, 11.

during the life of his former partner. This is the inflexible law she first proclaimed in the face of pagan emperors and people, and which she has ever upheld, in spite of the passions and voluptuousness of her own rebellious children.

Henry VIII, once an obedient son and defender of the Church, in an evil hour conceived a criminal attachment for Anne Boleyn, a lady of the queen's household, whom he desired to marry after being divorced from his lawful consort, Catharine of Aragon. But Pope Clement VII, whose sanction he solicited, sternly refused to ratify the separation, though the Pontiff could easily have foreseen that his determined action would involve the Church in persecution, and a whole nation in the unhappy schism of its ruler. Had the Pope acquiesced in the repudiation of Catharine, and in the marriage of Anne Boleyn, England would, indeed, have been spared to the Church, but the Church herself would have surrendered her peerless title of Mistress of Truth.

When Napoleon I repudiated his devoted wife, Josephine, and married Marie Louise, so well assured was he of the fruitlessness of his attempt to obtain from the Holy See the sanction of his divorce and subsequent marriage that he did not even consult the Holy Father on the subject.

A few years before, Napoleon appealed to Pius VII to annul the marriage which his brother Jerome had contracted with Miss Patterson of Baltimore. The Pope sent the following reply to the Emperor:

> Your majesty will understand that upon the information thus far received by us, it is not in our power to pronounce a sentence of nullity. We cannot enter a judgment in opposition to the rules of the Church, and we could not, without laying aside those rules, decree the invalidity of a union which, according to the Word of God, no human power can sunder.

Christian wives and mothers, what gratitude you owe to the Catholic Church for the honorable position you now hold in society! If you are no longer regarded as

the slave, but the equal, of your husbands; if you are no longer the toy of his caprice, and liable to be discarded at any moment; but if you are recognized as the mistress and queen of your household, you owe your emancipation to the Church. You are especially indebted for your liberty to the Popes, who rose up in all the majesty of their spiritual power to vindicate the rights of injured wives against the lustful tyranny of their husbands.

This social plague calls for a radical cure, to be found only in the abolition of our mischievous legislation regarding divorce, and in an honest application of the teachings of the Gospel.

If persons contemplating marriage were persuaded that, once united, they were legally debarred from entering into a second wedlock, they would be more circumspect before marriage in the choice of a life-partner, and would be more patient afterward in bearing the yoke and in tolerating each other's infirmities.

If ministers and magistrates would take the high stand of Catholic priests, refusing to marry any but those they know never to have been married before, the solution of the difficulty would be near at hand.

For magistrates, for ministers, for people, for all, there is one Lord and Master, and one Gospel, which commandeth: "A man shall leave father and mother, and shall cleave unto his wife, and they two shall be in one flesh." [1]

Our Lord recalls marriage to its primitive ordinance, as it was ordained by God. (Gen. II.) Now marriage in its primitive ordinance was the union of one man with one woman, for Jehovah created but one helpmate for Adam, and the Bible says that "man shall adhere to his wife," not *wives*.

By every title, then, of patriotic love for the welfare of our native land, by our concern for the greatest good for the greatest number of our fellow-men, present and

[1] Matt. xix : 4-6.

to come, by the obedience we owe to the word of God, it is our bounden duty to check by every means in our power this moral evil, this social cancer of divorce, in the United States of America.

MINISTERS AND DIVORCE[1]

Your editorial in the November issue of the *Homiletic Review,* advising ministers "under no circumstances whatever" to remarry divorced persons, gave me a very distinct shock, and I, for one, desire to register my protest against your position.

First, it seems to involve the fallacy that stricter laws—ecclesiastical in this case—would suppress the evil of divorce. Goaded by church councils and surface reformers, our lawmakers during the past twenty-five years have gradually made the divorce laws more stringent, and yet during this same period divorces have increased at a rate three times as great as before. Of the 820,264 divorces granted in this country during the twenty years from 1887-1906, it is said that two-thirds were granted for desertion—the law merely ratifying a separation that had already occurred. Divorce has never yet broken up one harmonious union. It is very doubtful if the adoption of your suggestion would tend materially "to stay the tide of shame."

But more important still, your position manifestly involves the view that all divorce is unjustifiable—a position that seems to me wholly untenable. From Luther and the sixteenth-century reformers generally to the jurists of the present day divorce has been considered the medicine for diseased marriage, and a little study of the actual grounds for divorce must convince any one that the medicine is sorely needed. Statistics do not indicate that American people rush inconsiderately

[1] Letter by J. W. Morgan, Henderson, N.C., to the editor of the Homiletic Review. Homiletic Review. 63: 76-7. January, 1912.

into the divorce courts. The average duration of divorced marriages is ten years, and 10 per cent of all our divorces occur after twenty-one years of married life. Only about 2 per cent of all divorces are granted in the first year.

There are graver reasons for divorce than the average person suspects. It is time we looked below the surface in the study of this question. Divorce, like headache, is a symptom. To remove it we need to get at the great underlying causes. Among these might be mentioned the moral leprosy, so prevalent among men. It has been estimated by physicians who are in a position to know the facts that 75 per cent of all special surgical operations performed upon women result from the most terrible of all diseases, contracted from husbands in the "holy state" of matrimony. About two-thirds of the 820,264 divorces granted during the two decades named above were obtained at the initiative of the wives. Doubtless the real cause in a large percentage of these cases was never named. Women shrink from advertising their shame. Not one divorce in ten, perhaps, is sought because of the commission of any statutory matrimonial offense. Surely no one who is at all acquainted with these conditions can deny that they furnish adequate grounds for divorce. Out of three thousand eminent physicians recently consulted by one of the leaders in the Divorce Reform Movement, 92 per cent declared pathological and psychopathological states to be grounds for divorce, and 97 per cent recommended divorce as the best cure for improper marriage.

True, the divorce rate in Episcopal England is about one hundred times lower than in this country. In Roman Catholic Spain the rate is lower still. No English woman ever brought suit against her husband for divorce prior to 1801. Probably such a course has never yet been pursued by any woman in the Turkish empire. But this does not mean that women in these countries suffer

less from matrimonial abuses. It is still true that "most European societies govern women by coercive laws or customs, and, in the lower classes, even by blows."

In fact, the divorce movement is in large measure an expression of woman's growing independence, and it is not without significance that the highest divorce rate exists in the two most enlightened democracies of the world, the United States and Switzerland. It is merely a new way of meeting old abuses. It represents the mighty protest of enlightened women against the age-long assumption of masculine superiority; it is a determined revolt from their former position of subordination to man and their dependence upon him—conditions that too often rendered the marriage state little more than licensed concubinage; it is a denial of the philosophy that women exist primarily for their husbands and children rather than for their own self-realization.

Divorce is an "evil" incident to the process of human development. It belongs to a period of transition, of confused moral standards, of improperly adjusted social relations. The divorcees are by no means the chief of sinners. Their suffering may even be regarded as vicarious. No one who is to any extent acquainted with the interdependence of men in our intricate social organism will dare to place upon these unfortunate individuals the whole responsibility for divorce. As a rule they are the victims of evils incident to an imperfect social organization.

How shall the Church treat these "offenders"? In the first place I wish to affirm with mighty emphasis the injustice of the popular judgment, suggested in your editorial, that the hands of every divorcee are "soiled." How bitter and cruel the irony concealed in this position! We have fastened upon society the double standard of morality, that fountain-head of the turbid stream of divorce; we have gloried in our almost criminally inadequate marriage laws, a heritage from ages past; we have

bound together in "holy wedlock" the hopelessly diseased, the professedly criminal, the pure and the impure. Ministers who shrink in holy horror from remarrying persons who have been righteously divorced, do not hesitate to unite with the known libertine or the confirmed drunkard the pure and innocent girl; and then when she dares to break the sacred chain by which they have bound her to this polluted body of death, they brand her with disgrace, and refuse her the poor consolation of washing her "soiled hands in the holy water of the church." Religion, what crimes are yet done in thy name! How long shall we continue to strain at gnats while we swallow camels? In the sight of God, and of all decent men who have not substituted theology for the higher sentiments of humanity, divorce is purer than unholy wedlock.

We would not argue that all divorced persons should remarry. Some persons should never have been allowed to marry at all. In remarrying divorced persons, as in marrying those who were never married before, the minister should decide each case upon its own merits. The indiscriminate refusal to remarry all persons who have been divorced is not only unreasonable and unjust to the individual, it is also unjust to society at large, for the highest good of the whole is inseparably bound up with the highest good of each component part. If through no fault of his own a person has failed to find happiness in one union, shall he therefore be excluded from the possibility of realizing his life in another?

Divorce is an evil, and we are anxious to stay its progress by all legitimate means. We are not so hard prest, however, that we are willing to accept Rome's absolute refusal of remarriage and church control of the divorce courts. The evil will disappear only when we have a rational system of education, proper marriage laws, and adequate social control. Then, and not till then, will "reign the world's great bridals, chaste, and calm." In the mean time, let us not forget that Jesus put men above institutions, mercy above orthodoxy.

EDUCATION AS A PREVENTIVE OF DIVORCE[1]

At this time, when the question of legislation on divorce is being discussed not only by statesmen and clergy, but also by many of the interested laity, it seems appropriate to inquire what divorce essentially is—whether it is, in and of itself, a social disease, a cure for a social disease, or a symptomatic resultant of more grave disorders. If we decide that divorce is, in itself, the evil, then we should expect to find a maximum of morality and happiness where there is a minimum of divorce. There are a few superficial observers ready to make this claim. But those who have to look below the surface of things have become suspicious of this conclusion and have been forced to believe that there is probably as much marital unhappiness without divorce as with it, and as flagrant violations of the moral law. But without divorce such unhappiness and such violations are more discreetly veiled than is possible when relief may be sought in court.

On the other hand, most right-thinking people will agree with the clergy that divorce is a very questionable cure for the evils from which we suffer, at best the clumsiest sort of social surgery, frequently causing as much harm as good by poisoning the blood of the social body.

Let us, therefore, for the purposes of this article, accept the hypothesis that divorce is really a result of diseased conditions and a warning that preventive medicine is needed. Let us admit that the real evil lies deeper than we have hitherto realized, in our lack of educative preparation for domestic relations, and in our conventional thought (or lack of thought) about the duties, responsibilities and privileges of married life. We have not remembered soon enough that what young men and women, or even girls and boys, think about marriage be-

[1] By Marguerite O. B. Wilkinson. Craftsman, 21: 473-81. February, 1912.

fore they marry is an important determinant of their subsequent way of living.

Let us admit that the real cure does not lie altogether, or even chiefly in the hands of legislators, much as we do need uniform legislation in this country, but rather in the hands of all those who have any part in the education of the public mind and conscience. Legislation can make marriage more difficult, thereby increasing illegitimate relationships already too numerous, or it can prohibit or restrict divorce with a limited and negative result in the favor of righteousness, but *right education can make the informed mind and the poised character which are necessary to the solution of great problems individual and national.*

And this brings to us a momentous choice. Either we must abandon the great monogamic ideal which centuries of painful evolution have brought us, and set up for posterity a lower and easier ideal, thus taking a step backward for the whole race, or else we must prepare men and women to live in harmony with this ideal. Otherwise we shall always have divorce.

Roughly stated, the monogamic ideal is the free choice of one woman by one man and one man by one woman as mates for life. It is an ideal that demands more in the way of constancy and self-control than any which preceded it, and yet, perhaps just because of this fact, and also because of the security it affords the child, we have firm faith in it, and there are few who would be willing to give it up. We are inclined to agree that the race has, at last, made a good general plan for the marriage relation, and that our difficulties (as is also the case with the ideal of democracy) are practical rather than theoretical. We are all individuals sharply differentiated one from another, and it has become a matter of vital importance to us to marry the right mates on the right terms, and to be loyal to them when chosen. After ages of rigid discipline we have developed a sense

of responsibility toward our neighbors, a realization that our marriages are important not only as touching our own temporary happiness and consequent usefulness, but also as they affect the lives of others. Therefore, we have the monogamic ideal. But we have not been able to cut away the aftermath of the old systems of marriage, and with hardy courage to prepare ourselves for the attainment of the new ideal. Therefore, we have with us divorce, which good clergymen abhor, good statesmen deprecate, and good people everywhere wish to avoid.

After centuries of shameful mythology which denounced motherhood as the "curse of Eve" we have come at last to declare the truth, even with lavish sentiment, that the functions of maternity are the noblest and most altruistic functions of physical life, and that spiritual motherhood is the greatest asset of civilization. But we are still childishly ashamed of the sex that goes before maternity and makes it possible. In these days of acute respect for scientific law we are apologetic for the reverent bi-sexual evolution whose highest triumph we are, and while, in our hearts, we thank God for making mothers, with our lips, or by silence, we chide Him for having made men and women diverse. Nor does the recognition of the altruistic power of spiritual motherhood lead us to trust in it, and to make it fully effective by turning its force into the channels of public as well as private life.

Our young people do not clamorously demand a knowledge of Greek, Latin, or higher mathematics, but these things we are careful to offer them. They do, universally, demand a working knowledge of life and love, but this we prudishly deny. Yet we have only to read the "advice to the love-lorn" column of a metropolitan daily to perceive a genuine anxiety about the wise choice of mates, and a thwarted idealism, which, if trained and encouraged, would blossom into the health and glory of the nation.

Of course, we are properly shocked when boys and girls of good stock and fair promise "go wrong," but we seem quite willing to leave them unaided by knowledge, to wrestle vainly for control with the mightiest and most superb of biological forces.

With naïve sagacity we advise boys and girls to marry "good" boys and girls, and think that in so doing we have done enough. But where is the definite standard by which they shall recognize "goodness," when they are turned loose in a world that will deceive them if it can, and just what degree of goodness can they demand and find?

We have begun to develop our girls along individual lines, as we develop our boys, but we still expect them to be contented with a submissive life of marital dependence, in which the will of the husband assumes all dignified responsibility and control, and all liberty for achievement. If there is something of value in each human ego, feminine as well as masculine, then is it not as valuable after marriage as before, and should we not either be consistently Chinese in a refusal to develop feminine individuality at all, or else adjust ourselves as speedily as possible to a plan of life that will give women greater scope for achievement? And should we not foster conventions flexible enough so that a woman is not forced to adopt either cooking or calling as the chief duty of life according to the weight of her husband's purse?

These are but a few of our inconsistencies—enough perhaps to hint at the causes that destroy homes through ill-considered and unsuitable marriages and ill-adjusted life plans. Oh, that our humanity were not afraid to be richly and fully human in its every manifestation!

Where there is no love—let it be many times repeated—there is no home, even though both persons with uncompromising firmness, resolve to stand by a bad bargain "for the children's sake." This requires a very substantial heroism on the part of parents and is productive

of good, for, in many cases, it secures to the child a protection which would otherwise be lacking. But it is not health, it is not happiness, it is not idealism. That divorce may cease to exist there must be right marriages, and that there may be right marriages there must be love and educative preparation for the passions as well as the labors of life.

To this end we must teach the right things about sex before the wrong things are learned, and we must be ready to do away with all notions of marriage and love that do not coordinate with the great ideal we have in view, and are, therefore, a corrupting force in our life. The best part of this twofold task is difficult, but the second part is herculean.

Those who are eager to begin the reconstruction could not do better than read Olive Schreiner's solemnly beautiful and prophetic book, "Woman and Labor." To read that book is to declare war on every morbid and unhealthy prejudice which prevents women from taking their rightful place in the world, and marriage from becoming the glorious thing it ought to be.

We must accustom ourselves to another new idea—that as marriage is no longer a duty for all women, so it is no longer a trade or profession, requiring all the time and labor of all married women. Some confusion has arisen on this point because certain labors have been associated with marriage in the popular mind. But these labors may in the near future come to be considered as trades in themselves, not inseparably connected with marriage, and the wives of the days to come may be found performing diverse tasks. For we know that in our own times a woman may be the best of good wives and good mothers but with small knowledge of spinning, weaving, basket-making, pottery-making, agriculture or even baking, although all of these trades used to be inseparably connected with the lives of married women. And tomorrow, owing to changed conditions, the woman

doctor or lawyer may seem to be as desirable a mate as the cook or seamstress today. So much is possible!

And here we come to the most potent of all causes of divorce—and conventionally enforced idleness of many married women—parasitism Mrs. Schreiner calls it—and the overwork of many of our men. As Mrs. Schreiner lucidly demonstrates a large part of the good, old-fashioned household labor of women has been taken from them, or at least from their direct control in the home, by the invention of machinery and the use of it by men. And women have not been able to balance this loss by assuming rapidly enough their share in the new intellectual fields of labor. Instead they have become, in ever-increasing numbers, dependent upon men for support without the old tasks that justified, to a certain extent, the old economic position of women, or at least made it consistent with self-respect. And it is one of the gravest evils of our times that, in order to satisfy certain pernicious conventions and support one or more healthy and capable women in compartive idleness, many of our finest men are compelled to hurry through life with no opportunity for culture and the sane, slow ripening of masculine character, with no time for altruistic service of the town, the commonwealth or the nation, and with no leisure for happy companionship with those women for whom he gives up so much.

The rush of our present life comes to bear most heavily on our most chivalrous. It wears them out physically and mentally and discourages them spiritually before they are fifty years of age. It gives them only time enough to nourish a vague doubt of the womanhood that is content to fatten on their toil, instead of laboring staunchly with them as healthy womanhood should do. They find their usefulness limited, their powers exhausted and wonder why. And then, sometimes in utter weariness they throw off the yoke and try to begin again. But the women are not always wholly to blame for this condition.

Sometimes with a perfect unreasoning "I can support a wife" pride, a man will insist that a woman should give up once and forever the only work in which she takes any interest, and leaves her a choice between idleness and housework in his home (which always with or without fitness, a man will permit a woman to do)! But if a woman should say to her husband before, or soon after marriage, "John, it does not please me that you should be a lawyer—you must become a stock broker," or "James, when you marry me you must give up the art that you love and become a carpenter," would we not be quick to decry her injustice? Yet there are men who still say to their wives, "The work you love you must give up. You may do the work I provide or none at all."

Of course, motherhood brings to women certain temporary limitations, but the thing we do not recognize is that these limitations are temporary. And, if, in all the ages past, women were able to combine with motherhood the most arduous physical labors, it seems probable that, in the present and the future when the demands of maternity are less rigorous, women should be able, with gain to the race, to enter the new fields of labor and accomplish laudable results.

Suppose a woman has been denied her own labor for conventional reasons and given the choice between housework and idleness. Suppose her children are out of her arms and at school and that a large part of her time is her own. Suppose that her husband's income is just large enough to admit of keeping a servant, provided they do not try to save. She does not like housework and keeps the servant, salving her conscience with the thought that "when John gets a raise" they can begin to save. Then she becomes a card fiend or a culture fiend—it does not much matter which, and for lack of good wholesome labor, employs a caddy to help her keep thin. Her husband is forced to become a work fiend, a drudge, a mere provider, and can no longer play the role of romantic lover. He is too sleepy in the evening to attempt to

keep abreast of her interests, and his accounts of his work probably do not interest her, since she is not a worker herself. Comradeship dies, and trouble begins right here.

Surely there is no greater safeguard for man and woman than the work in which mind and body can delight. Surely there is no more arbitrary convention than that which permits a man to dictate to his wife in her choice of labor. Surely it is time to give girls vocational training and permit wherever it is possible and right, the exercise of individual powers by married as well as by single women, and to say, with Mrs. Schreiner, "We claim all labor for our province."

Nor is there any greater foe of divorce than the full, reverential and human companionship of the man and woman who are husband and wife. For both it is cultural and valuable beyond the power of words to tell. But it is only possible between equals, and, say what he will to the contrary, no man of good sense can respect as an equal the woman whose days are so many efforts to kill time.

And, if the marriages of tomorrow are really to be happier than the marriages of today, girls must demand this status of full equality with the men they marry, not *an equality of privileges only,* but *an equality in responsibilities, duties and powers,* which, nevertheless recognizes that they are not identical.

The young wife must be strengthened in her vague belief that, although married, she is still a person and should be the director of her own physical, mental and spiritual activities, and responsible for them. For, when a woman, through force of misfit circumstances, becomes subservient in any great degree to the man with whom she lives, she loses, quite naturally, her sense of conscience and responsibility in matters over which she has little or no control. The old social custom which gave husbands absolute power in the control of wives had, at least, consistency to recommend it, since it also made

them responsible for their wives' behavior. Today the etiquette of life and the law of the land hold that women are morally responsible creatures, but the exigencies of life place them at a great disadvantage in matters of self-control.

When such a woman becomes restless and unhappy in her own home, she is shorn of all power to help herself because her thought and her desires have no value there, and she must go out of her home, into court, for redress, cherishing the sullen feeling that she "couldn't help it" and was not "to blame!"

And, if it is true that girls should demand less of men in the way of unearned leisure and luxury, and more in the way of liberty to control their own lives, it is also of primary importance that they should demand more of men in the way of temperance, soberness and chastity, and that they vehemently refuse the double standard of morals and stand firmly for the pure man as a father of tomorrow's citizens.

Let the boys and girls, then, face marriage with their eyes open, knowing that the decision about marriage is the most important an individual is called upon to make. Let them be trained from childhood in the laws of sex and right living, so that they fully understand the duties and privileges of life's greatest relationship. Let both be self-reliant economically, and offer them as many legitimate forms of amusement as possible, so that, by studying together, working together, and playing together they come to understand each other and do not make choice by force of proximity or moonlit perfervid error. Then, having met and loved, let them, before they marry, make their fundamental life plans, assign to each other the places they wish to hold, agree as to their economic relations and respective duties, and so, with the domestic altar firmly built upon a rock foundation, marry and fulfil their destinies.

Until these things have come to pass there can be no adequate cure for the "divorce evil." When they have

come to pass there will be no "divorce evil" left to cure.

WILL TO LOVE[1]

I find myself wondering why no one of the contributors to this vitally important discussion has asked seriously whether love between a man and a woman can or cannot be induced. This to me is the heart of the whole problem. On its answer hangs, as I shall hope to show, the answer to the divorce question.

It is customary to begin any discussion of marriage and divorce by assuming the desirability of uninterrupted family life, other things being equal. Even the present rising generation hesitates to contradict when one says that a man and wife should keep together if possible. The world sees that a nation of stable homes is a stable nation, and that children of such homes grow up into stalwart generations of men. The new President of Radcliffe College, Ada Louise Comstock, in her inaugural address declared that a large proportion of the dullards she had encountered in her years as an educator came from homes wherein divorce was either actual or imminent.

What the modern mind mainly questions is whether a child is not better off in a home frankly broken than in one that is full of cracks merely puttied over to give the appearance of wholeness. If any home could be doomed to remain forever in such a parlous condition, few of us, I think, would choose to be one of its inmates and only the most rigid disciplinarian would consign a child to such an atmosphere. The question which I raise is, need ever so cracked a domestic structure remain in that condition? In other words, has man or has he not the will to love?

Writing on the subject of divorce in a recent *Atlantic,* Mrs. Gerould calls it a cynical point of view which

[1] By Elizabeth C. Adams. Atlantic Monthly. 133: 194-6. February, 1924.

holds that "almost any two people who have once chosen to come together will be as happy in that as in any other combination." To my mind this is the only point of view which is not cynical, for it is the only one that takes it for granted that man has dominion over his own thinking and feeling. With it, to my mind, stands or falls the whole question of the rightness of divorce.

If it were wholly impossible for two persons to control their feeling for each other, marriages would rarely remain happy for longer than five or six years at best, and we might well form our laws to render divorce as easy as marriage.

That it is not impossible to foster love for one's wife or husband is being proved every day by thousands of thoughtful men and women, who, though more or less disillusioned as to the angelic nature of their partners in marriage, or at least as to the Heaven-made fitness of the match, have turned their attention to whatsoever things are lovely in each other, with the result that a new understanding and respect and even tenderness have grown up between them.

It may be claimed that only certain types of minds can perform such feats as this; that the highly organized, temperamental, passionate, or emotional man or woman is helpless before spontaneous feeling.

Who has not seen such miracles brought to pass, however, in the case of husbands and wives so temperamentally different that they seemed to speak in different tongues? By patient, kindly observance of each other's discernible lovely traits, and faith in the loveliness that lurks undiscovered in all created beings, these believers in themselves have finally built up a comradeship fit for the foundation of the best possible home.

That one or both of these persons might not have experienced more rapturous moments of happiness with more like-minded mates, I am not interested to dispute; but is it at all sure that, year in and year out, through

periods of the children's teething, or the bank account's running low, or missing trains, there would have been, even in the case of the most Heaven-made mates, a tale of uninterrupted joy?

In ancient India there was no choosing of mates, and yet, such was the sense of the duty of loving taught at the mother's knee,—not only of the duty, but of the beauty of loving,—that the young husband and wife usually managed to make a very good piece of work of idealizing each other, so that mutual respect and tenderness formed the atmosphere of home-life in early unconquered India.

In our own day, we have William James showing the possibility of the will to believe, which is an essential and sure step to the will to love; and we have Dr. Richard Cabot, in his chapter on Marriage in "What Men Live By," setting the true standard for good sportsmanship in marriage relations. A good sport, he shows, will take pride in succeeding in any adventure, and marriage is only one of life's adventures.

But how about the passionate element in love between the sexes, someone may ask. Can a man or woman be happy without it, and can children be richly endowed where it is lacking at their conception? Although I have seen homes that were happy without the presence of this element, I know that there are many writers on the subject, including the Swedish individualist, Ellen Key, who are unwilling to concede the possible perfectness of a home or joyousness of its children if passion enters not at all into the relation of the husband and wife.

To these I can say that I believe even this commonly considered involuntary feeling can grow out of the increased understanding, hence tenderness and attachment, that two intelligent, sympathetic persons can build up for each other on a basis of faith in God and in man.

Please note that I speak of the attachment that *two* persons can build up, as I doubt if a really close and tender comradeship can be established unless both of those concerned see the goal and are willing to try for it.

This does not mean that one would like to see society go back to the customs of early India and arrange marriages with no regard to mutual attraction; but it does mean that, the step to marriage once taken, one would like to see in the parties to it more of the attitude of the good sport, who never gives up until he has not only tried all the ordinary human methods, but also has set a higher standard of methods for saving the day. In the case of marriage, it would mean saving the day for homes of beautiful living and reliable loving.

That there should be some provision for failure in such an adventure, there seems to be no doubt, though I should like to see the granting of divorce based on the condition that neither party to it has another specific mate in mind. That a man or woman can make a thoroughly sincere try at learning to love the established partner, while having the attention diverted by a counter-attraction, is too much to expect. It simply cannot be done, unless the attracting outsider is definitely and irrevocably dismissed from the mind as a possible mate.

If story and scenario writers could be induced to cease a while in their glorification of the thrill of love at first sight, and be brought to show instead the glory of love attained through good sportsmanship, might not the number of divorces, with their trail of heartaches, miserable faith-robbed children, and weak men and women, be considerably lessened? Much more effective than such a reform, however, would be an enlightened revival of the Indian mother's custom of teaching her children the power of the spirit and the glory of man's dominion over his inner kingdom.

This is surprisingly easy, even with very little children. The Indian mother drew on the rich storehouse

of the "Ramayana" for models of loyalty and strength; but if the modern Occidental mother knows some of the best fairy tales, or the legends of the Round Table, she can fortify the young hearts of her children with many an indelible picture of faith triumphant over all evil suggestions.

When all men come to be so fortunate as to learn thus at a mother's knee something of the science of living and the art of loving, we shall have gone far toward eradicating the tendency to divorce, because we shall have struck at its root, materialistic selfishness, and shall have planted in its place the will to love.

OPEN DOOR IN MARRIAGE[1]

The following letter was written to a younger friend. Under the proper disguises, I am willing that it should be published, because I believe that women who hold my opinions should not leave the printed word entirely to those who preach the "open door" in marriage.

DEAR MARGARET:—

Surely you do not mind my knowing what you are planning to do with your life and the life of Kenneth and the children; and surely, even if you would prefer to shut me out in spite of the very close bonds that have existed between us, you will concede to your husband the right to have come to me in his trouble. To no one else could he give his confidence in the same way. He could assume on my part an old and deep affection for you, a predilection for understanding and sympathizing with you.

I am going to write you exactly what I think. I do not expect to change your decision. But some day you will have to look upon your present act in retrospect. Once, when I was young and going through a difficult experience, I suddenly realized that I should have to live the rest of my life with the sort of person

[1] By Anne C. E. Allinson. Atlantic Monthly. 130: 449-55. October, 1922.

I was then allowing myself to be. So I invented an epigram, and wrote it out and pinned it up on my desk, where I could see it every day. It read: "Look upon your present as the past of your future." The day will come, Madge, when this present will be your past, and looking back upon it from the vantage point of its consequences, you will say to yourself, either, "My best friend was wrong," or "My best friend was right." I am not going to make it possible for you to say, "My best friend expressed no opinion—why was she silent?"

First, I am going to write out the situation as I understand it. I want you to know the basis on which I speak. You married Kenneth in the belief that you loved him, and your first four years of life with him, during which your two children were born, were sufficiently happy ones. Then you came again in contact with Eugene, who had loved you before your marriage. You have found that you love him a great deal more than you love Kenneth. You thoroughly respect and like Kenneth, and you appreciate the value of his sturdy character and his honest and capable devotion to work. You really do enjoy being with him, but the glory—if there ever was a glory—of this love has passed away. It is your love for Eugene which now sweeps you on like a great tide, which lifts you to the stars, which vibrates with the immortal music of the universe, which is the holiest and purest thing you have ever known. You feel, in loving him, the white ecstasy of the saint.

All this, of course, Kenneth has not told me. I gather it only from his simple and restrained, "She loves him." But you see, dear child, certain things are common to the various forms of love. Nobody has to overhear young lovers of twenty, to know what they are talking about under their first moon; and nobody needs to be told how a woman of thirty-five describes to herself the love she feels for the man who supplants her good, but rather house-worn, husband. You are sharing an

experience that has always been very common. It is even commonplace. But that does not mean that to you it is any the less real. I do, indeed, appreciate the fact that you are experiencing a very powerful emotion.

But to go back to the situation. You feel that you must leave Kenneth and go to Eugene; but you love your children also and mean to take them with you. You ask Kenneth to give them up to you entirely. Your first plan was to go to Eugene without waiting for a divorce; but you now think it more "expedient" to legalize the relation from the beginning, and so you are going to wait for the process of the law.

Kenneth's attitude toward you is one of chivalric unselfishness. He will arrange for a divorce and be content with occasional visits from his children. He wants only your happiness. He fears for your future more profoundly than he sorrows for his own. He has begged you to remain with him on terms of friendship and freedom. In staying with him, you would not have to sacrifice any self-respect. You could preserve your economic independence and your personal liberty. You yourself see clearly that you have nothing to run away from or to escape from, but are choosing rather to go toward something and to seize something for yourself. This is the situation, is it not?

Now, for my own point of view. You have, evidently, not come to me yourself because you know that I would advise you to give up Eugene. I am going to try to think out what reasons I can give that would make any appeal to you. Of course, I am not going to offer "social conventions" or "religious dogmas." The modern term for these, I understand, is "taboos." By this word your contemporaries seek amusingly to relegate to the rank of savages those who believe in such conventions and dogmas. However, in the sense in which you understand them, I don't care much for them, either. Naturally, with my interest in history, I have more

sympathy than you have with their symbolic value, knowing that they represent props upon which men and women have relied in the never-ending struggle for civilization. But I am more than willing to set them all aside here. Certainly they would never be my own ultimate guides in periods of storm or stress.

I should myself wish to rise into the æther where the "Laws on high" abide. You remember the magnificent description of them by Sophocles—"No mortal nature among men gave birth to them, nor ever shall oblivion lull them to slumber. Great is God within them, and He grows not old." But I catch myself on the last phrase. I know that, quite aside from "religious dogmas," you have no religion in the richest significance of the term—in the significance dear to Socrates, or Marcus Aurelius, or Paul. My favorite definition of religion is the glowing phrase hurled to us from the trenches during the great war:—"It is betting your life on the existence of God." However you define God, He is the Thing bigger than your own life. You are now betting your life on the non-existence of forces and necessities greater than your own desires. This knowledge of you makes it impossible for me to suggest to you the two appeals that would summon my own will. I do not allude to myself lightly, Madge. You must realize that, like all men and women, I, too, have met moral crises in the course of years of living.

I cannot, for example, mention duty to you. The very word turns you cold and stony. It chills me also as the voice of "Puritans"; but as the "daughter of the voice of God," it has often come to me warm and tender, inspiriting and impelling. Over and over it has calmed within me the struggle of frail humanity. Over and over—for one rushes to the poets for figures—I have found that all the stubborn thistles along the way do indeed burst

> into glossy purples
> Which out-redden all voluptuous garden roses.

You look with contempt at a straight and narrow way bristling with thistles. You are like so many of a still younger generation. One of them said lately, "Yes, I acknowledge it is my duty; but, you see, the word means absolutely nothing to me." I discard it and try to think of something else.

If duty springs from the voice of God, there is a law of life which is God himself, and that, Margaret, is the law of sacrificial love. It is the most beautiful, the most vital, the most glorious, the deepest, the highest, the most unfathomable, the clearest thing that I have ever known. I believe that it transcends all the languages that you have ever studied, all the literatures that you have ever read. It is beyond all mysteries and all knowledge. Without it every other power within us is but as sounding brass and tinkling cymbal. That is how I have come to feel about it through years of searching, of experimenting, of using my intelligence, of having my heart picked up and used by life itself. But the only love that you admit to be authoritative is the sexual love of man and woman. This is not the "love" that has filled the centuries with the miracles of renunciation turned into power. This is not the "love" that lays down its life for another, that is crucified for another, that, in losing itself for a day, finds itself to all eternity. And yet, to you, it is paramount, while my "law" is but an empty phrase.

Dear Margaret, I told you that I should not suggest to you the laws on high. I fall from their æther to seek for points of contact between us, for words that come nearer meaning the same things to you and to me. Well, let me try this first. Even if you have not in you the flaming quality that I call love, have you, by any chance, a more ordinary humaneness, a rather refined unwillingness, perhaps, to inflict cruelty? I mean that sort of gentleness which made a Greek unable to watch suffering as the Romans could. You are sensitive to many

delicate impressions. I used to think you rather extraordinarily perceptive of other people. It was an intellectual and æsthetic rather than a moral quality in you, but it seemed to me very real. You performed for some of us very beautiful services, just because you saw so swiftly what our needs were. And now, years later, you are making no one happy except yourself and Eugene—a rather meagre accomplishment at your age! To the disillusionment and regrets of your old friends, you are naturally indifferent. Friends usually go down like ninepins before a lover! Kenneth's family you probably forget, in spite of their many kindnesses and services. Your own father and mother you are willing to hurt, meting out to them the normal fate of parents.

But Kenneth himself, whose happiness you once voluntarily took into your hands—can you who have been his wife really buy a new experiment in happiness at the expense of pulling down his very life in ruins about him? In view of his nature, you must know that he probably will be unable to find consolation in another marriage. You impose upon him a suffering that would be intolerable save for his own courage and patience. Madge, even if you had a right to it, would you partake of a feast in full view of a starving Volga peasant whom you had promised to feed?

But Kenneth can at least adjust his own character to the demands upon it. It is your children who call out to my pity—these tender, helpless babies, your victims. And, in a quite different way, Kenneth's victims, too. I think you both use them as pawns and puppets in this terrible game of your emotions. You bear them away with you merely because you want them as well as your new lover. He lets them go—rather than apply his legal rights—because he wishes to be unselfish toward you. Between you their lives are divided and mutilated. But your wrong, Margaret, is the greater. You must know that their surest chance

of happiness in this uncertain world lies in their being nurtured and cherished by the two who gave them life, and who love them equally. Eugene, however willing he seems now, will lack the great incentive to complete their parentage. Only the death of a father can move another man fully to take his place with little children. You think you are a good mother. But I tell you that Medea murdering her children in the madness of passion seems to me only a little more cruel than you are. She was more savage and swift. Your process will be slower, caring for the bodies of your children, but cutting away from their hearts and souls the props of a normal family life.

I speak out of the fullness of my heart. My father and mother lived together for nearly fifty years, differing from each other in temperament, in tastes, in intellectual interests, in religious beliefs, in manners, in preferences and prejudices—in everything but character. But whatever adjustments they needed to make were made in dignified silence out of the hearing or the sight of their children. No faintest echo reached us of one hour that was not one of harmony and love and mutual respect and consideration. Now their graves are side by side, under a tall fir tree that spreads its green branches over them summer and winter. They are no more one in death than they taught themselves to be in life. It was in the years after my mother's death that I had the profound privilege of coming near to my father. One day during an illness, when his eyes, so clear and clean even in old age, were tired with pain and his slender scholar's hand lay weak in mine, he said to me: "I have no fear of the future life. Either there is none,—which is simple,—or I shall have it with your mother." Margaret, Margaret, can you steal from your daughter the chance of such an hour? In sheer humaneness can you take her from the father of whose blood and bone she is, or deprive her of his indubitable union with her

mother? A child nurtured within such a marriage has most of her victories won for her in advance.

But who was ever made humane by another person's horror? I must assume that humaneness lies not in you. I square my shoulders and try again. I must step down from virtues to manners.

Have you read a recent novel called "Intrusion?" Toward the end there is an interesting discussion about the ethics of a woman leaving her husband for another man. The situation is your own, there being no fault whatever to find with the husband. Most of the characters think that the woman is justified. But a certain woman is allowed by the author to touch another note in a characteristically modern tentative way. I copy it out for you. Madeleine says:—

"We ought to pay, ought n't we, for our own mistakes? At least, we ought n't to make other people pay. . . . And in this case, surely, the husband did the paying. Somehow, I can't help feeling that this woman's refusal to pay her own debt soiled her. She may have been happier . . . I'm sure she was. . . . But she was less fine."

Guen tossed a smoked cigarette into her empty fireplace, and lighted another. "You mean," she said, as she tossed the match down after the dead cigarette, "that if you made a mistake,—of that sort,—you'd go on with it. You would n't . . . open the door?"

Madeleine hesitated. Caryl saw the color come into her face as though it disturbed her to have the subject made personal in this uncompromising fashion. "I think," she said at length, "that I should want . . . a better excuse."

"He'd have to do—the husband, I mean—something that killed your respect . . . that made it impossible for you to stay? You could n't just walk out?"

Madeleine seemed to accept this. "It might be quite all right for others," she said. "I feel sure it is. They'd feel unclean if they stopped. I should feel unclean if I went."

For a moment nobody said anything. Then Allan took the pipe out of his mouth and spoke.

"I see," he said. "Marriage for you is what Matthew Arnold said religion was—an affair of morality touched with emotion."

Madeleine turned her head and looked at him out of quiet eyes.

"I think I should n't say anything half as definite as all that" she told him. "It's merely my own feeling about it. I

don't feel it's a question of morality in the ordinary sense at all: it is, to me, just what I said it was—a matter of personal fastidiousness. It sounds priggish, I know, but you can't say what you mean in English. . . . It just is that there are some things you know you can't do. They revolt you—like certain things to eat, or the feel of a cat's fur."

I had an idea, Madge, of asking you about your "personal fastidiousness." But writing out the quotation has shown me how foolish that would be! The author of the novel, whose teeth, I think, are set on edge, as mine are, by cat's fur and maple sugar and making another person pay, admits that, if this question be one of taste, there is no room for argument. *De gustibus non est disputandum! Chacun a son gout!* This is the barren end of an effort to argue from physical to moral repulsions.

Dear child, I realize my impotence in this whole letter. I acknowledge that my idea of duty, my idea of self-sacrifice, my idea of humaneness, my kind of fastidiousness, to you make no appeal. But I am reluctant to own myself defeated. I shall try once more to scale the wall between us. I am now even willing to meet you on the lowest plane—your own desires.

You talk a great deal about life—at least, I suppose you do, because that is part of the vernacular of those who either make decisions like yours or approve of them. I, too, love the word. I love the way the thing itself surges from cradle to grave. I am thrilled daily by a fresh belief that it rises out of eternal springs and flows toward an infinite sea. "Fountains of living water"—that is the greatest figure by which to describe the amazing vitality of some men and women. But they are not those who force their total energy into one passional stream. They pour it broadcast into work and play, into art and beauty, into comradeship and into leadership.

While passion exists, it tempts to isolation. But really vital natures cannot long be held within its grip

alone. The joy of other creative things takes its turn in possessing them. They insist upon expressing themselves in a thousand ways disconnected with sex. If in these things they are at one with the man or woman whom they love, they are fortunate. But if not, these things do not die within them. Cisterns of genius or talent break less easily than that.

Now, to come back to yourself. You insist that you must leave Kenneth because intellectually you would "starve" with him. Madge, dear, I do try to remember that to you it is important—and perhaps should be important—whether you starve or not! But look your condition in the face. If your intellectual store is so meagre that its replenishments are dependent upon any one person, you are likely in time to starve anyway. As for your opportunity to "grow" in spite of the "bonds" of marriage, you yourself must acknowledge that your liberty with Kenneth would be as great as with Eugene. Your husband in this respect is "modern" to the last degree. He would respect your economic independence. He would do all in his power—even to the point of adjusting his own work to yours—to help you to develop any gift within you. Your grandiose "starvation" comes down to the mere fact that you and Kenneth have different sorts of minds. The difference exists within a certain radius of sameness; for you have both had the same kind of education and mental environment. Hundreds of able men who live with silly women, hundreds of "culture-loving" women who live with philistine men, would wonder what on earth you are fussing about.

But, Margaret, you seem intellectually to be more dependent upon those about you. You and Kenneth disagree about certain things, and you and Eugene agree about them. Kenneth has ceased to interest you—if he ever did. Eugene still does interest you. Therefore you think your powers will be greater if you live with Eu-

gene than if you live with Kenneth. I tell you brutally that you are allowing yourself to be an intellectual chameleon. Mental satisfaction does not lie that way. Riches of intellect are bought with harder coin.

But let us go on to something else. "Life" contains, in addition to emotion, and in addition to the expression of gifts or talents, the prosaic business of living, of getting and preparing food, of bathing babies, of having the washing done, of buying or making clothes, of cleaning house, or paying for the coal. These details are the substratum of health and well-being. They are the bony structure of any fair existence led by men or women. Only money can prevent them from bulking very large in the life of a man and woman who set up a ménage together. Now I understand that Eugene is no more able than Kenneth or yourself to buy immunity from many "petty" cares. I am told that his income is very limited for the family of four with which he must begin. It is probable that in marrying him you will—for a time, at least—lessen your own earning capacity. You are going to him in order to live in the same town and the same house with him; and often a woman cannot find congenial and remunerative work near her own door. It is also likely that your divorce will prove a handicap. Also you will probably have more children, which will involve a certain amount of "incapacity." Of course, you do not care if Eugene is poor—you are willing to be poor with him. But face certain inevitable future facts. Even if you do not increase your family, your poverty will entail many renunciations for both him and you. Especially will you have to limit yourselves because of the children. In doing this, Eugene will not have the same motive that you have, and you will be constantly fretted (for I think you have this much "fastidiousness") by the necessity of hampering him for the sake of another man's children.

Furthermore, in your lives, as in all lives, there will

be periods of sickness, of anxiety, of stark, drear drudgery. In the happiest and most beautiful marriages there are times when duty and self-sacrifice are stronger fortresses than romance against the assaults of outrageous fortune. But you and Eugene deny the efficacy of duty and self-sacrifice. Upon what, then, shall you rely? Surely not on passion! That will be no defense when you are ten years older—only ten short years older! Margaret, remember that emotional life runs high in you now only because it precedes the ebb granted by a Nature kinder and wiser than ourselves. And on the ebb tide what is to bind you and Eugene, who have come together by denying the validity of the other component parts of love? I have little faith in your being better toward each other than you are toward others. Experience has taught me that, in the long run, the different relations of life are merely outlets for the same stream. When I married, an old friend of my husband's wrote to me: "You may trust him, because he has never failed in any other relation." If the source is muddy, mud may come through any faucet.

What, then, is the alternative for you? I have lived long enough and diversely enough to watch the experiments of many, many people. And I can assure you that it is possible for you and Kenneth together to work your way through this devastating tempest into a serene harbor, where you will find peace for yourselves and blessings for your children. And that peace can be compounded of power, so that all your gifts—and his, for I have some concern for them also!—will bloom and blossom. I have seen it over and over in marriage. Among my acquaintances, sometimes the wife, sometimes the husband, has been caught in mid-stream by an alien passion and swept from the moorings of family life. Sometimes one or both have simply grown bored and restive. But they have held themselves in leash. They have placed their obligations before their emotions.

Often they have let the struggle be seen, and have subjected their marriage to the critical or anxious comments of their friends. But in the end they have "won out." In fortunate instances they have renewed the warmth of love. At the very least, they have become comrades in the pursuit of the interests which lie outside of sex and which appeal to all intelligent men and women during the second half of 'Life.' Instead of having laid waste their vineyard, they have pruned it to bear better fruit. Children and grandchildren cluster on the parent stem.

For such a future, Margaret,—quite as happy as any you can anticipate with Eugene,—you would sacrifice now a few years of emotional satisfaction. I do not say this lightly. When the tide runs full, the human will might well seem impotent. But all experience proves that it is not. You have had your share—you have had a great deal more than thousands of other women. In your case passion has been benign and constructive, leaving you with two strong and beautiful children. For their sakes, you can subdue yourself. For down through the generations men and women have done it, for a cause beyond themselves. Don't tell me you cannot sacrifice Eugene! His is not the first claim upon your sense of justice.

Sense of justice! Ah! Margaret, the word is like a bell, tolling me back to your real self. Neither Justice nor Love appeals to you. I look back over this letter. I have declined from one kind of plea down upon another, rejecting each one as still too high for you. At the end, I have been brought to accepting your own plea for happiness, and attempting only to argue that you would not find it. In doing this I perceive that I give up the fight. I own myself beaten. For never yet has common sense prevailed where the laws on high have failed. Only an angel can "ride the whirlwind" of our mortal natures.

Margaret, I am going to say one more word to you. If you were my own child, and I was told that, although you were going to do this, there was still one last thing that I might pray for, I would pray like this: "Let her come to me and say, 'I know that this is a cruel and cowardly thing that I am doing. I know that it is damnable and rotten. But I choose to do it.'" Then, as you turned to go to Eugene, I could at least comfort myself with a knowledge of your honesty. "When her day of trouble comes." I could say to myself, "she will have one clean weapon left to fight with."

UNIFORM MARRIAGE AND DIVORCE LAW

GENERAL DISCUSSION

AMERICA'S NEED OF A FEDERAL MARRIAGE AND DIVORCE LAW[1]

The marriage and divorce laws of the United States, in their inharmonious variety, bear some resemblance to a patchwork quilt. They are the work of something like forty-nine artisans working without a foreman and without a common plan. These marriage and divorce laws as a whole have dire results because of this lack of harmony.

Marriage usually referred to as an institution, is a civil contract, and as such has become the subject of state legislation. Each state legislature, as a state was formed, went about the business of fixing the marriage status of its citizens, exactly as it fixed contractual rights and property rights, without meeting on any common ground or starting from any common source, unless the somewhat remote ecclesiastical courts of England may be regarded as a common source. Few states made any provision for the recognition of the status of citizens of other states with reference to marriage, any more than they did for the rights of adjoining land owners, except by a sort of gentlemen's agreement called "comity between the states."

The regulations prescribed by the various states, each of them sovereign in their law-making power, related to (1) the existence of the marital contract, (2) the qualifications for marriage, (3) the prerequisites to a valid

[1] By Mrs. Edward Franklin White, Deputy Attorney General of Indiana; chairman of Legislation for the General Federation of Women's Clubs; author of the bill introduced in Congress on January 23, 1923, entitled, "Uniform Marriage and Divorce Laws in the United States." Current History Magazine, New York Times. 18: 246-50. May, 1923.

marriage, and (4) the valid dissolution of the marriage.

The making of the contract presupposes an agreement and the capacity of the parties to enter into the contract. These qualifications include not only the natural qualifications, such as mental capacity, but certain arbitrarily prescribed qualifications, such as age, race, relationship or physical conditions. The prerequisites to a valid marriage include the license, recording and solemnization; and the dissolution of the contract refers to the annulment of a void or voidable marriage and divorce.

Forty-nine Different Codes

With reference to every one of these conditions, forty-nine jurisdictions have forty-nine sets of laws. This would be of little moment if the citizens of one state always remained in that state, or if the removal therefrom was accompanied by expatriation, as in going to a foreign country. But our constantly shifting population makes an altogether different problem, for we are citizens of the United States in whatsoever state we may reside. Fundamentally, this is wrong, for it is necessary to moral rectitude that a marriage in one state shall be regarded as a marriage in every state.

Nearly every state declared that unless certain conditions obtained, a marriage should be absolutely void, and also declared that certain other conditions were essential, but that their absence should render the marriage voidable, but not void. For example, an existing undissolved marriage renders void the marriage of either party to another without the necessity for legal proceedings to declare it void. But a marriage without a license in a state in which a license to marry is required would render the contract merely voidable, but not void, and here it would be necessary to annul the marriage by court proceedings.

The laws of the state, it is clear, are as diverse as they can well be, and the imaginary line that separates

states may be the line between a lawfully wedded man and a bigamist, between a legitimate child and an outcast. For example, North Carolina recognizes two grounds for divorce, and the adjoining state of Tennessee recognizes ten, and neither state recognizes the laws of any other state with reference to the marriage status.

It is well to bear in mind at the outset that the provision of the Federal Constitution, which reads: "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state," refers to the credit given such acts and records as evidence, and not as rules of conduct. Their credit would be good to the extent of proving the existence of a marriage in the state where performed, but not under all circumstances, to the extent of determining the legality of that marriage in any other state.

The problem of the marriage and divorce evil has two horns—the viciousness of the state laws and their variableness. Our marriage laws do not measure up to modern ideas of social standards of integrity. Modern virtue may be lax, but sociology impels us to higher and higher ideals of marriage. This is shown by the constantly rising "age of consent," and by the tendency to increase the age at which boys and girls may legally marry and by the efforts to reduce the opportunities for the feeble-minded and diseased to marry and reproduce their kind, to prohibit the marriage of paupers which would increase the number of state dependents, to prevent the marriage between the white race and members of the black or yellow races, and to limit as far as possible incestuous marriages between prohibited degrees of consanguinity which also will reduce the number of physical defectives. Laws which fall below rising standards need to be reformed.

Though it may be said that a state should have the right to fix its own qualifications for the entrance into any contract, yet when those qualifications enter into the

validity of the contract, and the contract creates the civil status of a married pair and their children, who may be citizens of one state today and of another tomorrow, it may be doubted whether the several states should have the right to create a status or require qualifications not recognized in every other state. A state may not so much as regulate the safety handholds on a box car if that box car runs on a railroad engaged in interstate commerce, because interstate commerce is one of the three things on which Congress may enact uniform laws for use in the states. The courts have construed that right as exclusive.

Vices of Marriage Laws

Among the vices of existing laws as measured by our mounting ideals, we may note the lack of registration of marriages in an easily accessible record. Registration is an evidence of the family existence, of the birth and legitimacy of children, and is determinative of the rights of property. The record in many states, as returned to the State Board of Health, is simply a recital of the number of marriages and divorces, but not of the parties thereto.

Another grave evil is the lack of publicity given to the application for license and to the lax enforcement of license requirements. One of the chief objects to be sought in license requirements is the protection of the woman, and if a license may be granted in any county on false statements by any one concerning the qualifications of the woman, and the marriage may take place immediately, there is absolutely no protection for a girl who may be under age and no remedy to her friends or relatives until the mischief is done. A very few states require some time to elapse between the application for license and its issuance, and this tends to thwart this evil.

In many states the qualifications of good health, mental fitness, financial independence (at least one remote from pauperism) and absence of relationship are not insisted upon. If those subject to transmissable diseases or epilepsy intermarry, they are bound to produce diseased children; if mental defectives or first cousins intermarry, they will add to the number of public dependents. Paupers are forbidden to marry only in New Jersey, Pennsylvania, Delaware and Indiana. First cousins are not prohibited to marry in many states, and the records of institutions for the deaf and for the feebleminded show that the great majority of the inmates are the offspring of the marriage of first cousins.

Not all states require witnesses to the contract of marriage, but these same states would absolutely require, in case a man wished to transfer property by will, that he must have two witnesses. Only three of the New England states require witnesses. North Carolina is the only South Atlantic state and Louisiana the only southern state that so requires. In the west and middle west the rule is to require witnesses, but Indiana, Ohio, Iowa, Missouri and Idaho are exceptions.

Regardless of any idea of superiority or inferiority of the races, intermarriage between races is a very proper subject of legislation and prohibition. The natural law of the universe has tended to keep the different races separate, as they have been in all ages and countries down to the time of the introduction of slavery into America. Nine states now permit the legal marriage of the blacks and the whites. The many states which prohibit the marriage to a white person of one having one-eighth of negro blood would, if their laws also contained a comity provision, be compelled to recognize such a marriage in their state if performed in another state.

The ages at which children may marry range upward from twelve for the girl and fourteen for the boy through twelve and fifteen, thirteen and fourteen, four-

teen and sixteen, fourteen and eighteen, respectively, to the legal marriageable age, without consent of parents; of sixteen and sixteen in Tennessee, sixteen and eighteen in New Hampshire and sixteen and twenty-one in Maryland. I am glad to record that the majority of states require the attainment of the ages of eighteen and twenty-one before legal marriage without the consent of parents may be entered upon.

Seventeen states fix no marriageable age, but in nine of these the ecclesiastical ages of twelve for girls and fourteen for boys have been formally recognized, which means that in the remaining eight states no marriage could be declared void for "non-age." The inconsistency of saying that a boy of fourteen is of sufficient capacity to determine his life history, but not of sufficient capacity by seven years to execute a valid deed to a home he might own, or to contract for his household supplies, is plainly apparent. It is intolerable to think that in many states children of twelve and fourteen may legally marry when they have the consent of parents or guardians. Such consent, it is evident, may be given by one who is himself without moral responsibility or mental capacity.

If a husband of fourteen or fifteen should come into the state of Indiana, for instance, he would find himself within the compulsory school age of the state, and subject to the laws for the protection of children, including municipal curfew laws. He could obtain employment only by the permission of the school authorities, and no employer could hire him unless he produced his school certificate.

Another vice in many states is the lack of sufficient penalties to insure the strict enforcement of what good laws they do have. Severe penalties should be inflicted for false statements by the applicants for a license or any one in their behalf; for failure of the marriage license clerk to require full proof of all necessary qualifications, and for the issuance of a license with knowl-

edge of a legal impediment to marriage; also for the solemnization of a marriage with such knowledge or without sufficient authorization, by law or by license.

Our State Divorce Laws

The situation with reference to divorce is exactly the same. No two states are alike in the grounds for divorce, and many states are strict in not recognizing divorces granted in other states, especially when so obtained in evasion of the laws of the state regarding legal residence.

The matter of notice to the respondent is a very important factor in extraterritorial divorces. A state which permits a divorce to be obtained within its borders upon slight proof of a six months' residence, upon notice by publication in its own newspapers, will be the Mecca of all victims of marital infelicity who can afford the price. But divorce granted upon such notice by publication is not recognized in many states, and should not be recognized. Decisions by the highest courts of New York have maintained that that is the criterion of the "full faith and credit" clause of the Constitution, that a decree of divorce to be given full credit in another state must be granted after jurisdiction obtained of the parties, and that jurisdiction is not required by publication.

The grounds for divorce vary from none in South Carolina and one in New York, up to fourteen in New Hampshire; Oregon goes one step beyond, however, for in addition to the named grounds, divorce may be granted for any cause which the court deems sufficient.

The outstanding evil of the divorce laws is that they carry no speed limit. We fix a speed limit on automobiles to avoid wrecking lives; why do we not do the same in respect to divorce? The opportunity for immediate remarriage frequently conduces to divorce. A few states have provided a waiting time, a cooling time, by providing that no decree of divorce shall be absolute, but shall

remain interlocutory for one year. During this year neither party may marry again, and if the parties decide to resume the marital state they may do so without further action by the court except to dismiss the proceedings.

The proportion of divorces to marriages is steadily increasing, and is excessively high where Gretna Greens are established, and in the case of runaway or secret marriages which have become so popular lately among high school and college students. It is estimated that 75 to 85 per cent of those marriages result in divorce or annulment.

One other subject may be touched upon as a condition arising out of exclusive state jurisdiction of divorce, and that is the enforcement of court decrees relating to alimony or contribution to support of children. An absconding husband or father going out of the state must be extradited for the enforcement of state decrees. If such an act were an offense against a national law he could be forced in any state to make payments in accordance with the decree.

A National Issue

The framers of our Constitution gave Congress the power to enact legislation touching upon the affairs of the nation, and specified in addition thereto three subjects of interstate concern for national laws, to wit, commerce between the states, naturalization and bankruptcy. We give the framers of that Constitution the credit for wonderful vision and foresight, but we scarcely see how they could have foreseen the remarkable divergence of laws governing marriage and divorce and the consequent confusion that has arisen.

Is it not quite as much a matter of national concern that the status of a citizen shall be uniform in the several states, as that a citizen shall be created by naturalization? Is not the shifting of families from state to

state, with their property and their civil rights, quite as much within the broad meaning of interstate commerce as the transportation of goods from one state to another? Is financial bankruptcy any more a national interest than bankruptcy of the home and family?

The interest of the state and the nation in this question can be compelled from the very strongest motive—self-preservation. The family is, and always has been, the unit of government, the grouping of families resulting in the smaller divisions of government, which in turn unite to form the state, the nation being but the higher organized groups of multiple families. The entity and the sanctity of the family are jeopardized by lax marriage laws, as well as by too easily evaded divorce laws.

The highest purpose in the regulation of marriage and divorce is the interest which society and the state takes in the offspring of the marriage. It is the effect upon the race and its integrity and well being which is the matter of deepest concern. Though provisions are made in divorce to sever those unequally yoked, some states making it easy for the two to go their separate ways, and some making it very hard, yet the main purpose is to preserve the honor of the family and descent of property to the children and provide for their maintenance.

Federal Law the Only Solution

To my mind, there are just two ways to remedy the condition above described—the enactment of the same identical law in every state of the Union, or the enactment of one law by Congress covering so much of the subject as is necessary to be uniform.

Merely amending our laws and making them reach higher ideals would not be a solution, for we would still have the diversity. Recognition in one state of marriages or divorces in other states is not a feasible solution of the difficulty, for that would render almost mean-

ingless the legislation on such relationships in any one state, and make of equal sanctity the legislation on the same subject of every other state.

The adoption in every state of the same identical law covering such controversial questions as qualifications for marriage and grounds for divorce could be nullified by a state again amending its laws and upsetting the uniformity.

Taking into consideration all the details and difficulties, the national law is the only feasible way to reach results. It is not necessary that it be enforced by Federal courts, but its enforcement may be placed in state courts. The national law may be an average, and must of necessity be a compromise.

Great diversity of grounds for divorce will make it necessary that there be a simplification and that there be compromise in reaching a given adjustment uniform in all states. New Hampshire will have to yield some of her fourteen grounds; New York will have to add some to her one ground, and South Carolina will have to accept legal divorce for illegal but recognized concubinage.

There will be no state to run to, for either marriage or divorce, for the law will be the same in all states. But the summum bonum will be accomplished in making a marriage valid in one state valid in every other state, a divorce obtained in one state recognized in every other state, and a child legitimate in one state legitimate in every other state.

It is the almost unanimous opinion of lawyers who have considered the question that an amendment to the Constitution is necessary to enable Congress to pass such a law. Therefore an amendment has been submitted, together with a bill which represents a very fair average of the thought on these subjects from north, east, south and west. It contains no provision which is not in use and operation in some state, and it contains many pro-

visions which have been demanded by various states as a remedy for their ills.

MARRIAGE AND DIVORCE[1]

Why this lack of current popular interest in what would seem to lie at the very roots of national character? Against what more discreditable evil could the next nation-wide crusade direct itself than the lack of harmony in the states of the union in all which appertains to marriage? Our spiritual need of an interstate marriage and divorce law is quite as great as was our economic need of an interstate commerce law—some compromise of local customs that shall weld baneful contradictions of principle and practice into serviceable unity. And here let it be said that the obstacles to this are in very small part clerical, but result in the main from the tenacity of state traditions and self-satisfied indifference to the value of exact records. The churches as such, except in especial communities, continue to be powerless as ever in this country to control legislation concerning the requisites for marriage or validity of divorce. South Carolina is the one state where divorce is not permitted; the divorce laws were repealed in 1878. But with this air of superiority she presents the anomaly of requiring neither a marriage license nor a return or record of marriage. If the parties simply agree that they are married it is enough, and no formalities are necessary either before or after. Confirmation of this can be found in the last report of the National Bureau of the Census, on marriage and divorce (1916), to which I shall revert presently, and in the section of the South Carolina statutes which reads: "Nothing herein contained shall render any marriage illegal without the issuance of a license." Life in a community where the sole legal test of matrimony is the say so of the contracting parties,

[1] By Robert Grant, judge of the Probate Court, Boston; author of "Woman and Property," etc. Scribner's Magazine. 66: 193-8. August, 1919.

seems, however pastoral or independent, casual from the point of view of domestic stability, and lovers of formalities will be apt to condone the irony of an English commentator not many years ago who proposed "to abolish divorce altogether and to establish the idyllic conditions of a certain American state where, owing to the absence of divorce, the laws of succession are adapted to the complicated requirements of polygamy and concubinage."

The intensity of certain prejudices regarding marriage and how irrational they appear to other mortals, if not to the community concerned after a short lapse of time, was never better illustrated than by the declaration of another Englishman, previously lord chancellor, that if marriage with a deceased wife's sister ever became legal the decadence of England was inevitable, and that he would rather see three hundred thousand Frenchmen landed on the English coasts. This was before the day when any one would have been apt to inquire if he would feel the same way if they happened to be Boches, and in the meantime the ban against marrying a deceased wife's sister which was likened by a bishop of Exeter to the horror of marrying one's own mother has been removed in Great Britain to the relief of a highly entertained world, though ludicrously enough the act of 1907 which accomplished this omitted to sanction the marriage of a woman to her deceased husband's brother. This particular restriction by way of affinity never took root in the United States, but was virtually repudiated from the outset as inconsistent with the common-sense argument that if a wife with young children happens to die, the most suitable person in the world to be her successor may be her own sister. Even the Roman Catholic Church regards the prohibition as resting not on direct or natural law, but merely on an ecclesiastical command, and, therefore, claims and constantly exercises the right of dispensing with it.

But at this point native uniformity virtually ceases and the idiosyncrasies of separate or more frequently

groups of states as to whom one may marry or under what conditions one may marry are very far from identical. Happily, many of the newer and a few of the older states have taken for granted and refrained from prescribing in cold type that marriage with one's mother, grandmother or grandchild is forbidden, but as to more debatable restrictions the statute-books remain decidedly at odds. For example, there is no consensus of opinion as to whether wedlock with a stepmother or mother-in-law is permissable, and a woman brought up on Tennyson looked aghast the other day when informed by me that in a number of states of the Union the intermarriage of first cousins is unlawful. As to the age of consent to marriage, in some states the common-law rule of fourteen for boys and twelve for girls obtains, for this absence of legislation is almost invariably safeguarded by a statute fixing an age limit, twenty-one for males and ordinarily eighteen for females, below which parental consent to marriage is requisite. In other states the age of consent to marriage is defined by statute, varying according to locality all the way from twenty-one to fourteen for males, ringing the intervening changes, and from twenty-one to twelve for females. In the provisions which relate to the celebration itself there is no less dissimilarity. If it will astonish some to be told that in the early days of New England, magistrates not clergymen had power to bind people in matrimony, and that prior to 1686 no marriage with "prayer-book and ring" was legal in Massachusetts, it will seem more surprising to others that though marriage by civil authorities is sanctioned universally elsewhere in the country, the laws of three states (Maryland, West Virginia, and Delaware) inhibit lay celebration. On the other hand, in Pennsylvania, for instance (affirmed by express statute in 1885), a bride and groom may solemnize their own marriage by taking each other by the hand and plighting their vows in the presence of twelve witnesses, one of whom should be but need not be a justice of the peace. In

certain states no witnesses at all are essential, nor is the taking out of a license invariably a prerequisite, while with respect to record of the evidences of marriage, there has existed not only wide divergence as to practice, but in many jurisdictions, especially in the south and southwest, much slovenliness and unconcern in the tabulation of these social statistics. At present, to quote from the report of the Bureau of the Census (1916) already referred to, "all of the states except South Carolina require every marriage solemnized to be reported to some official specified by law, and for nearly two-thirds of the states there is legal provision for the state registration of marriages even though in some of these states this provision of law is not fully carried out." While this shows an improving tendency toward uniformity in the methods of preserving these highly important details concerning family life, it is obvious that at least one-third of the sovereign states are still lukewarm on the subject.

This random survey of interstate idiosyncracies reveals a national crazy-quilt of legislation concerning all that bears on matrimony, the pattern of which displays broad stripes of conformity in custom variegated by patches of repugnancy, and the cardinal difficulty in the way of reconciling these numerous disparities so that the marriage laws of the nation may be virtually if not wholly similar is the tenacity of tradition and community sentiment. Perhaps the most pressing immediate need is general adoption of the so-called marriage evasion act, the aim of which is to prevent couples disabled or prohibited from marrying under the laws of the state where they dwell from going elsewhere to be married and returning to their native state to set up housekeeping unchallenged. There is no difficulty whatever in preventing this dire and disgraceful consequence, which results solely from the legal necessity—an odd one to laymen—of recognizing the marriage requirements sanctioned by a sister state, although the laws of

the original domicile would pronounce the parties fornicators; any state has the power to prescribe by statute that the marriage of those who leave it for such a purpose shall be void within its borders and, reciprocally, that before issuing a license to a person who resides or intends to continue to reside in another state, the officer having authority shall satisfy himself by affidavit that the petitioner is not prohibited from marrying by the laws of that other jurisdiction. This meets the case of offenders both going and coming, so to speak, and seems solely in the interest of decent living; nevertheless, as has been already pointed out, no alacrity has thus far been shown by the separate states in adopting it, though a few of them have kindred provisions already. This dilatoriness is due mainly to jealousy of outside dictation or interference, but in part to a wide-spread easy-going sneaking sympathy on the part of democracy for people who wish to be married and are debarred by the law. In the consciousness of the courts the tendency is familiar that where a couple bent on matrimony is concerned, most people free from responsibility and some of those charged with it will let down the bars rather than put searching questions, and also that the runaway finds constantly an accomplice in the wearer of holy orders. As Mr. Howard (already quoted) well asks in his closing pages: "Is there any boy or girl so immature, if only the legal age of consent has been reached; is there any 'delinquent' so dangerous through inherited tendencies to disease or crime; is there any worn-out debauchee who cannot somewhere find a magistrate or priest to tie the 'sacred' knot?"

False sentimentality in alliance with the vulgarly independent notion that marriage in a democracy is nobody's real business except the bride's and groom's has a tendency to nip and retard measures which like forward shoots in a heterogeneous garden mark the vitality of social ethics, for lack of uniformity has proved by no means a bar to separate development. No less than six

states have registered their faith in eugenics by legislation which requires either an affidavit or certificate from persons intending to marry that they are free from sexual disease. Yet the attempts to prove these laws unconstitutional on the ground, among others, that they interfere with the religious liberty of the contracting parties illustrate the reluctance of both the prudish and the ignorant to trammel the so-called rights of the individual for the sake of the general welfare. One would assume that the marriage of the epileptic, imbecile, or feeble-minded would be universally prohibited as tending to perpetuate idiocy, shiftlessness, and crime, but the roll-call of the states would show that the statutes restraining this are almost as infrequent as those to prevent the clandestine marriage outside the state of residents who thus seek to evade the requirements of their own laws.

It will be long, perhaps, if ever, before all the local peculiarities of marriage are reconciled and the United States becomes one table-land of conformity to the detriment possibly of racial flavor and distinction. But though the several communities are likely to continue hard to convince when the issue is merely the superiority of other tribal customs to their own, it should be clear to all who think of them in terms of a nation that the existence of a separate marriage code in each of forty-eight independent, sovereign, and contiguous commonwealths, providing usually a passport for all who wish to evade it to seek some less exacting jurisdiction with impunity, is a menace to the stability as well as the repute of American family life, and that the domestic purity on which we pride ourselves is sadly discredited by such a hydra-headed condition of the body politic. Is it strange that foreigners should shrug their shoulders and decline to believe that the institutions of a country where a woman may be adjudged wife, concubine, or bigamist, according as she inhabits one or another of several cities within the radius of a hundred miles, can

be either exemplary or a stimulus to virtue? Yet the real stigma attaching to the American institution of marriage should not be ascribed to the mere prevalence of divorce, but rather to the facilities afforded by prejudice against interstate cooperation to the lawless and evil-disposed to utilize the map of the United States for a "three-card monte" game which leaves alike the priest, the lawgiver, and the man in the street perpetually misled as to the permanence of any marriage if the contracting parties are bent on dissolving it. Nor may we cavil at those who challenge the sincerity of a people who could so easily, if they chose, eradicate much of this scandal by an offensive defensive interstate alliance such as is provided by the uniform evasion act, which would leave few loopholes, if any, for the lascivious and godless. It is erroneous to suppose that there is at present much variance between the states in the grounds on which divorce is granted; with few exceptions they are identical in the main.

It was brought out at the conference of the International Law Association at London in 1910 that there is not a cause for divorce in the United States which can not be duplicated on the continent of Europe, and that in most European countries mutual assent is a cause for divorce under certain restrictions. The confusion that throws a shadow on our family life and gives to foreigners a wrong impression regarding it is due largely to the flitting from state to state which too much insistence on local sovereignty safeguards to the peril of national domestic morals.

Yet with this abuse remedied, we have still to reckon with collusive divorce which when both parties are agreed on severance of the bonds of matrimony makes incompatibility the decisive factor provided sufficient evidence be trumped up to satisfy one of the legal statutory grounds—roughly speaking, adultery, cruelty, desertion, drunkenness, neglect to provide.

In his highly entertaining but frankly cynical play "Why Marry?" Mr. Jesse Lynch Williams holds up a mirror to the American people in which the only benedicts who remain unblemished are the couples who just before the curtain falls are saved from the radical expedient of consorting together unconventionally by a quick-witted lawyer who pronounces them man and wife according to the law of the state they were in in spite of themselves, because they had so declared themselves to the assembled company. The interrogation of the comedy is a timely challenge to that American self-consciousness which reads into the marriage service the proviso that "until death do us part" is merely a Pickwickian phrase; but the satire is directed quite as much at the lack of spiritual consideration with which matrimony is entered into as at the ease with which it is shuffled off. Even the mercenary and utilitarian marriages of European countries acquire a certain dignity when compared with those of the same sort here from the formalities which attend them and from the lack of reserves as to their endurance. People in Europe still expect to stay married even though disillusioned and are correspondingly circumspect in consenting to wed; but with us the deliberation which ought to precede the most solemn function in life is too apt to yield to the democratic innuendo: "Why worry when escape is so easy if one wearies of it?"

That consciousness of the courts which sees in the refusal of the churches to countenance divorce except for a single cause, if any, only a losing battle that grows more helpless every year, is not, on the other hand, blind to a tendency among the people of the United States to substitute incompatibility for graver grounds and thus to make the dissolution of marriage hinge on caprice instead of some tangible grievance. The latest report of the National Census Bureau once more discloses not only an increase in the ratio of divorce to marriage, but in the ratio of divorce to growth of popu-

lation—one hundred and twelve divorces to every one hundred thousand people in 1916, as against eighty-four in 1906, and seventy-three in 1900. There were 112,036 divorces granted in the country in 1916, concerning 108,702 of which there are exact statistics; of these, 39,990, more than a third, were for desertion, with cruelty second, and two combined accounting for very nearly two-thirds (65.1 per cent) of all the divorces granted in that year, adultery figuring far behind, and drunkenness lagging in the rear. While these causes preserve the same order as in the two previous censuses of twenty years apart and are deceptive so far as they may sometimes conceal the real reason for separation, they serve notice on their face that one or the other spouse had wearied of the association—a decision the social morality of which rests on the individual conscience. Once more, too, it appears that the proportion of divorces granted to the wife in comparison with the husband has not stood still, the 66.6 per cent determined by the twenty-year investigation from 1887 to 1906 having risen to 68.9 per cent of the whole. While a portion of this discrepancy between the sexes is explicable on the ground that the wife has a legal cause for divorce more frequently than the husband, and that certain grievances such as failure to support and cruelty are more peculiar to the wife, the assumption that married life in this country continues to be purer than elsewhere in the world must face the dual knowledge that more people continue to obtain divorces in the United States than ever before and that a larger number of the applicants are women. While the vital social conviction of our day that both sexes—and especially wives —have a right to demand a larger measure of decent living from a partner for life may partly account for and justify this, there are signs that the mere weariness with the marriage relation, which results when love flies out of the window independent of tangible causes, offends the scruples of fewer wives than formerly as

a self-respecting ground for divorce. In this connection it is interesting to note that at the very moment when the mutual obligations of matrimony are in a state of flux, owing mainly to the revolt of woman, the Bolshevist program should out of its murky consciousness prescribe as a panacea that her right to suit herself in husbands should be abrogated and turned topsyturvey.

It should be added that where innocent parties to marriage are concerned the policy of the legislatures and the courts has generally, though by no means universally, kept pace with the humanitarian tendencies of the age. Offspring born out of wedlock become legitimate nearly everywhere on the marriage of their parents. It is law in some states and should be in all that a marriage solemnized by any one falsely professing legal authority to perform it is valid if either the man or woman thus united is honestly deceived; the parties remain husband and wife, and the bogus clergyman or justice of the peace is subject to fine or imprisonment. In the same spirit the statutes often provide that, if a man or woman marry during the lifetime of a husband or wife with whom marriage is in force, but in good faith and full, though erroneous, belief that the previous marriage has been terminated by death or divorce, the second marriage becomes valid as soon as the impediment is removed by the death or divorce of the other party to the former marriage, and the issue of the second marriage is legitimized.

It was bitterly claimed in a case before me that "good faith" implied that the second wife should have taken proper precautions to ascertain whether the story which the man told her as to his divorce was true, but each court which considered the point held that all the statute required was honest intention, not prudence. Indeed, it may be said that in most jurisdictions in this country the law already stretches a point to avert the full consequences of an irregular marriage involving an innocent person—a course which subsequent uniformity

will perfect. Couples who wish to stay married are given ample protection under our legal systems. The vital question for Americans to consider is whether refusing to stay married by hook or crook and incidentally hoodwinking the courts is to be rated as a perquisite of liberty plus respectability if the petitioner has missed happiness—for what else does the growth in our divorce rate portend?

BAD MARRIAGE AND QUICK DIVORCE[1]

"Quick loving a woman means quick not loving a woman," says one of the remarkable proverbs of the Guinea coast Negroes. As an American should say, "Married in haste we repent at leisure;" or, with more blunt reference to current events, "Frivolous, immature, or other bad marriages end in the divorce court."

The African proverb is not the only wise hint which so-called backward races can give us on the divorce question. Often among barbarous or even savage tribes are revealed a careful attention to detail, a common sense, a stability, and sometimes a respect for equity in the unwritten law regarding the making and the unmaking of marriages, which prejudice is scarcely prepared to find; while other peoples commonly looked upon as civilized, but relatively non-progressive, such as the Chinese, are quite capable of teaching us useful lessons. The divorced wife, for instance, is not cast adrift upon the world; almost always she has some place to go to, namely, her own family or clan, whose duty it is to care for her. In general, among rude peoples, a divorce is frowned upon after children are born; and even where great liberty of separation is allowed divorce is far less frequent than is popularly believed. Their conservatism is surprising. The American Indians are conspicuous

[1] By George Elliott Howard, Professor of Sociology and Political Science, University of Nebraska. Journal of Applied Sociology. 6: 1-10, December, 1921.

in this regard. Some social customs which we have outgrown had virtue in them for the primitive family life. Wife-purchase and the blood-feud, for example, had each a steadying effect: for the one checked divorce through the pocketbook; the other, through dread of clan-vengeance.

Cure Marriage, Cure Divorce. It is well understood that the over-sophistication of present-day civilization—its complex relations, its congestion of population, its new and conflicting wants, its swiftly changing standards—has fostered some vicious habits unknown to primitive men. It is perfectly clear to any student of history whose vision is not obscured by ecclesiastical mist, that the swiftly rising divorce rate is due to bad social conditions which must be understood and remedied before the movement can be checked. In many ways, these conditions are disastrously affecting the popular ideals of wedlock and the family life. They are causing bad marriages to be contracted and they are sanctioning wrong connubial and domestic relations for which inevitably a remedy is sought—in most cases justly sought—in divorce. To lessen the number of divorces and so increase the sum of human happiness, it is needful to lessen the number of marriages which ought never to be formed. To do that, social conditions—the basic causes of such wrong mating—must be improved, chiefly through efficient education for marriage and the family life, supported by wise constructive legislation. Now what are the chief varieties of such bad marriages?

Lightminded Wedlock. First is that large class of unions entered into without serious thought. Some of these are frivolous, some immature, some otherwise lightminded. For a long time in the United States, the age at which a man or a woman married was steadily rising. On the whole this upward movement was a hopeful sign; for it meant higher physical, mental, cultural, and financial fitness for family responsibility. Recently

the tide has turned and the average wedding age is dropping. In part the change may be due to a feeling that the rising tide had reached the danger line; but in the main it may be accounted for by the sudden increase of thoughtless unions. All over the land is being sounded the alarm of the precocious social liberty allowed young boys and girls. Parties, balls, clubs, fraternities for children in the grades! Little misses overdressed—or underdressed—and bedizened in the class-room and on the street! Blasé at ten years of age and in near evening dress at ten o'clock in the morning. All this excessive imitation of the social functioning of grown-ups means precocious stimulus of sex-consciousness; and thoughtless marriage is its natural fruit.

The levity with which marriages are often contracted is amazing and disheartening. Young persons who have never considered each other's spiritual fitness for life-long companionship, who have not given a serious thought to the obligations of parentage, who have never read a book or had a lesson on the question of sex, heredity, or eugenics, rush into matrimony as if it were a transient fête or a "society function." Sometimes the wedding is made a prank or a show at a fair, on a train, in an airplane, or elsewhere, to gain prestige for "smartness." This is not the worst of it. Such persons seem never at a loss to find a justice or a minister to "solemnize" these travesties of the nuptial vows. Here is a typical example. The following paragraph relating to a notorious wedding resort which formerly existed in Michigan, illustrates the shocking frivolity with which the most important of human relations is sometimes treated:

> It is estimated that fully 20,000 people will visit this city tomorrow to attend the third annual Maccabees' county picnic. It is thought tomorrow will prove to be the greatest day in the history of St. Joseph as the Gretna Green of Chicago. Fully forty-four bridal couples will arrive from Chicago to take advantage of being married free, as is offered in a part of their

program. The parties with matrimonial intentions, upon calling at Marriage Temple, will be furnished by County Clerk Needham with their license and a handsome marriage certificate, free of charge, provided they consent to be married in public from the veranda of the hotels. Any clergyman in the city, upon request, will officiate. Hundreds of excursionists from Indiana will come for the express purpose of witnessing the ceremonies.

How many of these two-score couples who were thus married in levity were later unmarried in sadness? Doubtless, the percentage was large. For one Gretna Green or "marriage resort" is far more harmful than many "divorce colonies," such as that at Reno. Indeed, the marriage resort is the fruitful mother of the divorce colony, and of many "regular" divorces besides.

Yet the levity continues. On October 10 of this year a press dispatch in a Los Angeles newspaper states that at the convention of the American Legion in Kansas City the Rev. John W. Inzer, chaplain of the legion, and a local jeweler have announced that all ex-service men may marry here free of cost. Inzer will perform the ceremony free, the jeweler will furnish the ring, and the other expenses of the ceremonies, which will be performed in the local churches, will be borne by the convention fund. "Cupid," we are assured, "will work fast."

It is earnestly to be hoped that the young men of the Legion may have better sense than to accept the light-minded suggestion. Surely the fate of the so-called patriotic war-marriages has given them serious warning. Patriotism is a worthy emotion; but it is not usually the right emotion on which to base happy and lasting wedlock. The "war brides" craze, which everywhere in the warring lands was so recklessly encouraged, is now yielding its evil fruit. These hasty weddings are now ending in quick divorce. A high authority recently announced that two thousand petitions were now on the waiting list in the English court, the offenders in most cases being fickle war brides. Is there any

state in America which has not a similar record of broken vows?

Tainted Wedlock. What proper check is society placing upon the marriages of the physically or mentally unfit? How ignorantly, with what utter indifference are the most dangerous unions permitted; how many thousands of parents fail to give their children any serious warning against yielding to transient impulse in choosing a mate! Is there any boy or girl so immature if only the legal age of consent has been reached; is there any "delinquent" so dangerous through inherited tendencies to disease or crime; is there any worn out rake, who cannot somewhere find a magistrate or a priest to tie the "sacred knot?" "As our laws now stand," exclaims Elizabeth Stuart Phelps, "There is no man so drunken, so immoral, so brutal, so cruel, that he may not take to himself the purest, the most refined, the most sensitive of women to wife, if he can get her. There is no woman so paltry, so petty, so vain, so enfeebled in body and mind by corset or chloral, flirtation or worse, that she may not become the wife of an intellectual, honorable man, and the mother of his doomed children. There is no pauper who may not wed a pauper and beget paupers to the end of the story. There is no felon returned from his prison, or loose upon society, uncondemned, who may not make a base play at wedlock, and perpetuate his diseased soul and body in those of his descendants, without restraint." Thanks chiefly to the efforts of the sociologists, the picture need not now be quite so dark. A loftier ideal of wedlock has been slowly rising. Here and there schools and colleges are providing some instruction regarding sex problems and the obligations of marriage, parentage, and the family life. The movement for the legal sanction of eugenic marriage has won some protection. Yet but a small portion of our population has been reached by these various influences. Is there not abundant evidence that in

many places every count in Mrs. Phelp's severe indictment is still valid?

The worst of all bad marriages are those tainted from the start by venereal disease. The great black plague is a constant menace to the family bond. According to Prince Morrow, fully one-eighth of all disease and suffering comes from this scourge. He estimates that 80 per cent of the "deaths from inflammatory diseases peculiar to women, 75 per cent of all special surgical operations performed on women, and over 60 per cent of all work done by specialists in diseases of women" are from this source; "while 50 per cent or more of these infected women are rendered absolutely and irremediably sterile." Such is the horrible penalty which the innocent wife and mother pays for the man's sin. Although usually the "conspiracy of silence" prevents the true cause from being named in the decree, there is small risk in saying that a vast number of divorces are due to the man's secret disease, discovered by the woman after taking the nuptial vow.

Pseudo-Romantic Wedlock. "Romantic love" or "falling in love" has gained almost a religious sanction among the majority of the good people of the United States. In its mediaeval origin, romantic love meant a lofty ideal of womanhood and of the marital relation. It signified a striving to lift wedlock above the merely carnal and the material level and to place it on a spiritual plane. This ideal born of chivalry reaches its finest expression in the words of Milton. Rejecting the gross and carnal conception of the Fathers and the canonists, their glaring contradiction between marriage as a "defilement" and as a "sacrament," he urges that matrimony is a society "more than human, centering in the soul rather than in the body;" a companionship resting upon the "deep and serious verity" of "mutual love," without which wedlock is "nothing but the empty husks of an outside matrimony."

Forbid that I should do anything to lessen respect for this true and exalted ideal! It is not strange that we in America have glorified romantic love and contrasted it with the "marriage of convenience," the mere bargain of worldly prudence. Yet so-called romantic love—false romantic love—is one of the chief sources of frivolous marriage and quick divorce. It is a beautiful cloak which covers many a fatal blunder in choosing a mate. Said a good mother, when asked why she did not hinder her daughter from wedding a man plainly below her spiritual level, "How could I help it; they had fallen in love with each other!" Is there not something finer than "falling in love?" In thousands of cases, young persons give that name to mere sexual passion which scarcely outlives the honeymoon. Their unions are merely temporary sensual attachments.

"Growing in love" is better than "falling in love." The thought-out, deliberate evaluation of both bodily and spiritual qualities is safer. Is it not quite possible through intelligent training in the family and in the school gradually to establish such a custom, such a standard of mating, as shall secure enduring affection and a stable marriage relation? Greater tasks have been accomplished; for example, the establishment of the monogamic ideal of the lifelong union of one woman with one man; the severest restraint which society has ever imposed on the human impulse.

Risky Wedlock. There are social conditions which constantly produce bad marriages that end in the divorce court. Many a woman to her later sorrow marries a "moderate drinker" without realizing her peril, or a drunkard in the hope of reforming him. That the sources of divorce are bad social conditions which may be remedied is illustrated by the sinister fact that directly and indirectly 184,568 divorces, or nearly 20 per cent of the entire number for the United States reported for the two decades 1887-1906, were granted for intemperance;

and in nine-tenths of these cases the culprit was the man. Surely the situation called loudly, not for less divorce, but for less liquor and fewer saloons. So far as this one cause is concerned, the constitutional amendment securing nation-wide prohibition may prove to be the most effective uniform divorce law which could be enacted.

It is natural to ask whether it is possible to know how many of the divorces granted in a given period are due to frivolous or other bad marriages. Some light is thrown on the question in the special census report already mentioned. It there appears that the average duration of divorced marriages was ten years. The number of divorces granted in the first year of the wedded life for the whole period of the two decades was 18,876 or 2.1 per cent; in the second year, according to estimates, not less than 50,000; and in the third year, 61,481 or 6.8 per cent. It is, perhaps, fair to assume that many of these quick divorces were the natural fruit of wrong wedlock; but that very many of the decrees granted in the later years were due to the same cause, there can hardly be a doubt. The evils resulting from the original mistake may be endured for a long time before the crisis comes.

How May Bad Marriages Be Checked? First of all we must try to focus public attention upon marriage rather than divorce. Divorce must be frankly accepted as an effect rather than a cause of bad social conditions; as a remedy for a social malady. To the sixteenth century reformer divorce was the "medicine for the disease of marriage." Emphatically it remains so today. The wise reformer must deal with causes rather than with effects. He will recognize that in a general but very real sense the divorced man or woman is a sufferer from bad social conditions which may be remedied. He will not waste his energies in unjustly punishing divorced people, although some of them may deserve punishment. Rather

he will strive to lessen the social wrongs of which the divorced man or woman is usually the victim. Let ecclesiastical synods, if they would serve society, concern themselves more with prevention of marriages of the unfit. Let them reflect on the social wickedness of joining in wedlock the innocent girl with the rich or titled rake; or uniting in the nuptial bond those who are tainted by inherited tendencies to disease or crime.

Secondly, greater stability of the family union may be secured through a thorough revision of our marriage laws. Let every marriage resort be closed. A good civil matrimonial code tends to check hasty, clandestine, frivolous, and immature wedlock. A bad marriage law favors such unions. Now, it may be reasonably doubted whether any people in Occidental lands has marriage laws so defective as ours. As a preliminary to any reform—to clear the field of a practice which is subversive of constructive legislation—the "common law" contract should be utterly abolished. Practically all the hardship and social anarchy caused by the canon law at its wickedest survives in our common law marriage. Yet in only seventeen states, including California, have such unions been clearly declared invalid either by statute or by court decision. The ages below which a marriage may not be contracted ought to be that of legal majority for both the man and the woman. "Majority" is the law's simple device for securing mental maturity in the graver affairs of life. Is not wedlock as serious a business as making a will or signing a deed? Immature marriages are a prolific source of evil, including divorce; why should the parent, often ignorant or selfish, have the power of legalizing them by his consent?

We need, especially, a better and a uniform license system, so as to secure full publicity and faithful compliance with the spirit of the law. It should include a provision for the announcement of intention to marry so that at least ten days' advance notice should be given

before the issuance of the license. For all applicants only five states now require such an advance notice of from two to five days. There are many other defects in the marriage laws of the states which may not here be mentioned.

Finally, there is need of a better informed public sentiment. Fill the minds of the young with social knowledge, and you will forestall domestic unrest and check family dissolution. We must foster a loftier ideal of the domestic relations. But the raising of ideals is a slow process. It will come only through a sound training of the young. We are in sore need of a rational system of education, broad enough to embrace the whole complex problem of sex, marriage and the family.

LEGAL CONTROL OF YOUNG GIRL MARRIAGES [1]

Let no utopian theorist imagine that rules and regulations can ever be formulated whereby the mating instinct will be thoroughly rationalized, assuring that each match will conform to a model, thus and so. Human nature does not lend itself to any such cut-and-dried formula. Certain minimum restrictions and regulations are, however, at once desirable and practicable. Any such control must be both legal and social. As a human problem, child marriage is one naturally belonging within the scope of social work. Yet in order to apply any regulative measures with authority there must be a legal sanction. The rest of this paper will consider certain legal requirements which are desirable in order to have a better control over child marriages.

Every state exercises a certain amount of governmental supervision of marriage. The matrimonial tie

[1] From article "Young Girl Marriages in Criminal and Juvenile Courts," by Arthur W. Towne, superintendent Brooklyn Society for the Prevention of Cruelty to Children. Journal of Social Hygiene. 8: 287-305. July, 1922.

is more than a contract between two individuals; it is a legalized status in which interests of organized society are vitally concerned; the state is a third party. The power to enter upon marriage does not reside in children as an inalienable right; but is to be regarded as a privilege which the state may or may not grant. No function of government is more important than that of safeguarding the welfare of minors. Wise public policy dictates that the legal control over the marriage of adolescents should be broad and authoritative.

The suggestions here set forth refer both to substantive standards and to procedure. The main regulations should be the same whether the juvenile marriage arises in connection with law-enforcing proceedings (as criminal prosecutions), or whether the couples simply seek to be married in the ordinary lawful course of things.

1. Under the common law, children of seven could contract imperfect or inchoate marriage. This may be termed the minimum marriageable age. When girls became twelve and boys fourteen, they attained the full legal powers of adults with regard to entering upon matrimony; that is, they have reached the age of marriageable majority. Marriages entered upon prior to the seventh birthday were void; those contracted between seven and twelve or fourteen, as the case might be, were voidable by court decree. In a third of our American states these common-law provisions still obtain with respect to both minimum and majority ages. In the other states, laws have been passed raising the ages at which marriageable majority, or the so-called age of marriageable consent, is reached. For girls this is in most places fixed at sixteen, and in some states as high as eighteen. Except in a few states no changes have been made in the minimum age at which incomplete or voidable marriages can occur. Unless the statutes expressly stipulate that marriages contracted below the age of marriageable majority are null and void, they are

probably in most states only voidable. Even when the language of the law calls for parental consent, marriages without such consent are ordinarily regarded by the courts as binding. In other words, in over a third of the states, girls of twelve, regardless of the attitude of their parents, can exercise their own free will in stepping into fully binding unions; and practically throughout the country girls even younger—theoretically those of only seven—can be inveigled into matches which must stand unless abrogated by a court. Every legislature should determine a minimum marriageable age below which any attempted matrimonial contracts will be automatically void. This age for girls should be not lower than fourteen or fifteen. The corresponding age for boys should be no less than sixteen. The age of marriageable majority for girls should be not lower than eighteen. The corresponding age for boys should be no lower.

2. There should be the requirement of definite proof of age, including, in addition to statements by the girl and her parents, supplementary proof through documentary, medical, or other necessary evidence.

3. No minor above the minimum marriageable age should be allowed to marry, without first securing a license, or without some kind of ceremony. Common-law marriages on the part of minors should be prohibited.

4. Parental consent should be required, unless deemed unnecessary as provided in the next recommendation.

5. Some governmental agency should look into each application and act in the light of its findings. Experience shows that parents are often incapable of exercising prudent discretion in this matter. By the same token it is sometimes imperative to deprive parents of the custody of their children because of improper guardianship. Parents, even those of good character, are frequently unfit, especially in the midst of a tragic situation, to exercise sober judgment with respect to surrendering their daughters in marriage. Certainly, in the cases now

brought to the attention of the courts, it is highly important that some public authority, qualified to discharge the duty, should advise with parents, and, when necessary, overrule any actions on their part, which clearly stand out as detrimental to the safety or welfare of their children. Applicants should not have the right to demand a license whether or no, but only when the proper public officials, in their discretion, deem it right to grant the privilege. Since human rights are so intimately affected, this discretionary power should be vested preferably in some judicial authority—if possible, in the juvenile or family court.

Between the minimum marriageable age and the age of marriageable majority, no license should be issued to a girl; then, only after inquiry and approval by the juvenile or family court. This should not be in place of the parental consent, but in addition. The court should be empowered to give its approval, in suitable instances, even in spite of parental objection. In certain places, courts are already used to pass upon juvenile marriages. Two alternatives present themselves: the court may take charge of the entire business of issuing marriage licenses; or better, it may simply give its approval or disapproval, leaving it to the city or town clerk or health officer or other administrative official to look after the mechanical phases. Assuming that the juvenile or family court is to handle these child marriages, it becomes highly important that proper methods be employed in arriving at decisions. The question before the court should not be viewed as primarily legal; it is inherently a social, medical, psychological, and ethical problem. It calls for painstaking investigation and analysis of all the varied factors, and for a broad understanding of the principles fundamental in good social service case work. This means that the court should have the aid of an efficient probation officer as well as of

physicians and psychiatrists. Each case should be individual.

6. A reasonable lapse of time, ten to thirty days, should intervene between the application for a license and its issuance. This allows opportunity for official investigation as to age and as to the propriety of the marriage, and incidentally permits the couple to repent if their application has been too hasty.

7. No license should be issued unless a medical examination shows freedom from communicable disease. Those whose mentality is as low as the imbecile grade should be barred from marriage.

8. The consent or objection by parents, as well as the applications of the prospective bride and groom, should be under oath as to all items. Perjury and related frauds, such as false impersonation, should be dealt with through suitable proceedings.

9. Men who wed girls, known by them to be below the age of marriageable majority, without first securing the required parental consent and official approval, should be liable to prosecution. Persons officiating at marriages, where no marriage license has been obtained, should also be liable to a penalty.

10. Licenses should be issued, so far as practicable, in the place of residence of the girl.

11. Suitable restrictive measures should be enacted to check the marrying of eloping couples from other states, when their marriages in their own state would be prohibited, and to limit the validity of such marriages if the couple directly return to their own states to live. Public condemnation should be heaped upon the marrying parsons and near-sighted justices of the peace, whose palms are forever itching for a marriage fee. One means to this end is the provision of penalties for the violation of the law on their part.

12. All marriages should be registered.

The general scheme just set forth would greatly

reduce the abuses which at present are so often associated with prosecutions for rape and similar offenses.

Pending the enactment of legislation along some such lines, criminal and juvenile courts and licensing authorities can, to a considerable extent, put into effect the basic principles here advocated. The court should not surrender the decision in these matters to the whims of the parties involved: the affairs are more than private suits to be compromised at will; they are public affairs in which the state is a participant and in which the courts, in addition to any legal responsibility, have a moral duty to perform. It is of uppermost moment that the criminal and juvenile courts should understand each other's point of view, and work in harmony. Whenever legally possible, the final say as to whether a young girl should be permitted to enter the connubial state should rest with the juvenile or family court rather than with the tribunal having jurisdiction over the male defendant alone.

Even though a carefully considered policy is pursued, watchful care will be needed lest a marriage may suddenly take place when such a turn of events is little suspected. One of the best safeguards is to see that the girl complainant in the criminal court is held by the juvenile court under some restraint, custodial or otherwise. In many cases this means temporary care in a detention home or some other place of safekeeping where parental ignorance and emotionalism, or the trickery and threats of the adult defendant, cannot control the situation. The proper authorities should stand ready to oppose any attempt which may be made by attorneys to bring about a marriage through obtaining the release of the girl on a writ of *habeas corpus*. Proper cooperation should also be sought from the police, the public prosecutor, the licensing authorities, maternity hospitals, children's institutions, and those empowered to perform marriages, and various others.

When a criminal charge stands against the man or a juvenile court charge involves the girl, and the couple are judicially permitted either to remain married or to become married, the exercise of a watchful, friendly supervision by a probation officer can often be very helpful. The juvenile court should not surrrender jurisdiction over girls simply because they are wedded—in their new condition they may urgently require its guidance and protection.

The matter of annulling marriages of girls under a certain age, say eighteen, on the ground of immaturity (legally known as nonage) has not received the attention it merits. In reality the provision that marriages may be annulled because of youth creates a legalized form of trial marriage. Here again we are dealing, not with a legal issue alone, but with a social problem which in each instance deserves painstaking inquiry, usually through home investigations, clinical examinations, and so on. Some form of social service is often called for, if the annulment is granted. These cases, as well as separation and divorce actions pertaining to juvenile or family court. At times the girl wife, instead of being turned loose upon the community, is a fit subject for institutional treatment.

In each state the subject of child marriage affords a fruitful field for inquiry and reform. Intensive case studies ought to prove illuminating. It is a topic entitled to be well up on the program of the state commissions on child welfare legislation recently created in several states. Especially urgent is it that the requisite machinery be made available to throw protection about young girls in rural districts. The task must not at first be attacked too drastically, for over-restrictive marriage laws are hard to enforce without occasioning alternative evils: after the embargo is declared, subterfuges are usually found making it possible to run the blockade.

When measures of control are finally worked out they should be accompanied by satisfactory provisions with respect to such allied matters as age of consent, illegitimacy, a state-wide, really operative juvenile court system, the prompt trial of criminal prosecutions, the shielding of girl witnesses in rape and kindred adult court cases from notoriety and other exploitation in the course of the trials and in the newspapers, and the maintenance of effective standards of social case work in both juvenile and criminal courts. And equally as important as legislative changes are educational efforts to reshape the ideas of girls and their parents on the subject and to bring about a more intelligent public opinion.

COMMON LAW MARRIAGE[1]

According to popular view, common law marriage simply means living in adultery. The man and woman are not referred to as husband and wife merely, but as *common law* husband and *common law* wife. And even lawyers are constantly using these terms. As was said by the Supreme Court of New York: "The term 'common law wife' is not one known to the law, and the law looks with no favor upon the connection indicated by it." But common law *marriage,* the subject of this article, is as much a marriage as one attended with the utmost solemnity in those states where common law marriages are recognized. This statement may be well illustrated by reference to a decision of a District Court of the United States in 1918. A man in Minnesota signed a contract of marriage in duplicate and sent both copies to a woman in Missouri. One copy she retained and the other she returned signed to the man in Minnesota. The parties were not in the presence of each other

[1] By Otto E. Koegel, D.C.L., Assistant United States Attorney for the District of Columbia. Family. 4: 172-5. November, 1923.

when the agreement was executed and never thereafter lived together. The man was killed on a railroad and the woman brought suit against the company as widow of the deceased. She recovered. There is ample authority for the statement that the decision would have been the same had the agreement been oral or even made over the telephone. A great number of cases arose during the war where American boys in France married girls in this country by such an exchange of consent.

The common law marriage may be contracted in two ways, (1) *per verba de praesenti*, that is, by present consent to become husband and wife, and (2) *per verba de futuro*, that is, by an agreement to become husband and wife in the future, followed by carnal intercourse. The theory of the latter is that the carnal intercourse is the consummation of the previous agreement to marry in the future.

The common law marriage gets its name from the common law of England. Strictly speaking, it is inaccurate. Marriage in England was cognizable only in the spiritual or ecclesiastical courts and these courts administered the canon law or law of the Roman Church. Prior to the year 1563, when the Decretum Reformatione of the Council of Trent was passed, the canon law recognized consensual marriages in the forms referred to. The decrees of the Council of Trent, however, were never received in England, consequently informal marriages remained in force until 1753, when they were abolished by Act of Parliament. The basis of the jurisprudence of this country is the common law of England and, as no ecclesiastical tribunals were tolerated by the colonists, marriage and other subjects appertaining to the ecclesiastical courts in the mother country were considered as part of the common law of the new country. Hence common law marriage is marriage good by the common law.

While the methods of contracting so-called common law marriage above mentioned are admitted by text writers and some courts, most American courts have rejected the canon law doctrine entirely and adopted a spurious doctrine which they call common law marriage. No American court has expressly upheld a marriage *per verba de futuro cum copula*. Only six states have upheld a marriage contracted by mere words couched in present tense without more. What most courts require is present consent followed by cohabitation or an assumption by the parties of the marital relationship. This, however, when analyzed, appears ridiculous. The parties must presently agree to become husband and wife and then they must live together as such. After they have done these things they are married by virtue of the spurious doctrine of so-called common law marriage. A doctrine that requires two persons to be guilty of the crime of fornication a number of times before they create the legal status of matrimony is absurd. Yet this is exactly what is required in a number of American states. Again, where will the line be drawn? When do the parties cease to be fornicators, and just when does the sublime institution of matrimony begin? What about the legal presumption that intercourse illicit in its inception will be presumed to continue to be illicit? These and many other questions confront one upon investigation of this subject.

The state of the law on this subject is much confused. Very slight evidence of an intent to change the *status personarum* is required. The Supreme Court of Alabama has said that it is not necessary that the parties believe themselves "married in the eyes of the law," and they do not. Lord Stowell said they may doubt the validity of their marriage, and most of them do. Lord Stowell also said that secrecy is perfectly consistent with an informal marriage.

During the World War there was within the organization of the Bureau of War Risk Insurance the largest court of domestic relations in the world. The enlisted men in the military and naval service were compelled to support their families while in service unless granted exemption for good cause shown. More than one hundred and ten thousand men claimed exemption from supporting their wives and children. Out of this number were many hundreds of alleged common law marriages. A great many cases of alleged common law marriages were also presented under the insurance and compensation features of the War Risk Insurance Act. There is no doubt that the War Risk Insurance Bureau considered more cases of alleged common law marriage, yes, many times over, than are contained in all the reports of adjudicated cases put together. I am in a position to say that most of these alleged marriages are but meretricious relationships, for the convenience of the parties alone, and in a large percentage of the cases the reason no formal celebration of the marriage was had is because one or the other, and in many cases both, of the parties were already married but not divorced from a former spouse. There is nearly always a ghost in the closet. Moreover, very few, if any, of these persons really believe they are married. If we adopt as a *sine qua non* to the validity of these marriages the belief of the parties that a divorce is necessary to dissolve the relationship (and it is necessary), then there are no common law marriages. We have already seen, however, that they need not believe themselves married "in the eyes of the law." And few if any of these persons believe their children are legitimate. In fact, nearly all believe that "common law marriage" and "living in adultery" are synonymous terms. And if the New York court was correct in its defini-

tion of "common law wife," most lawyers believe the same, as lawyers invariably designate these persons as common law husband and common law wife.

The usual argument advanced in favor of these unions is that they render the children legitimate. This was the brief argument of the Supreme Court in 1878. But the fact is overlooked that a great number of these unions are not and were not intended to be permanent. The parties just "quit" as they call it, and then go through a marriage ceremony with someone else. If the first union is held a marriage in order to legitimize the children, the children of the subsequent formal union must be bastardized.

Common law marriages are valid today in but one-half of our states and territories. The legislature of Missouri in March, 1921, declared them void, influenced somewhat no doubt by the decision of the Federal Court in Missouri in 1918. The bill was introduced at the instance of the Children's Code Commission which evidently did not believe that the interests of children are protected to any great extent by these informal unions. The American Bar Association and practically every writer on the subject of marriage has condemned the common law marriage. One says "no doubt our common law marriage is thoroughly bad, involving social evils of the most dangerous character . . . and practically all the hardship and social anarchy of the canon law at its wickedest survives in our common law, . . . a custom which legalizes and virtually invites impure and secret unions." Another asks "is it not an amazing fact that, in a matter which so profoundly affects the dignity and stability of the family institution, society should be so slow to take enlightened action?" And an eminent Scotch lawyer has said "the law makes clear and full provisions for contracts affecting the sale of

houses and lands, horses and dogs, and goods and chattels of every description; and why marriage, the most important of all human contracts, should not be as anxiously defined and provided for and thus placed beyond the reach of both fraud and doubt appears to me to be one of the greatest anomalies in the law of a Christian country." It is a fact that even the English judges who decided in favor of the validity of common law marriages in the nineteenth century disapproved of them. Lord Campbell says, "I have always been of opinion that to constitute this, the most important of all contracts, on which society itself depends, there ought to be a public form of celebration to which no reasonable person can object, admitting, by means of registration, of easy, certain and perpetual proof; the addition of a religious ceremony being highly desirable, although not absolutely necessary." And Lord Stowell says, "in most civilized countries, acting under a sense of the force of sacred obligations, it (marriage) has had the sanction of religion superadded."

In connection with the proposed reform abolishing the common law marriages I would make this important suggestion: The statute should provide that where the parties attempt a valid ceremonial marriage, but because of the existence of an impediment can effect no valid marriage, as where the divorce from a former spouse is illegal, and continue the marital relationship after the impediment is removed, as where the divorced spouse dies, they should be deemed to be legally married effective from the date the impediment is removed. Alaska, Iowa and Massachusetts seem to be the only states in which such provision has been made.

The following table shows the present state of the law on the subject in the United States:

State	Per Verba de Futuro		Per Verba de Futuro cum Copula	Relief from Cohabitation After Removal of Impediment
	Without Cohabitation	Followed by Cohabitation		
Alabama	Invalid [1]	Valid [1]	Invalid [1]	Yes [1]
Alaska	Invalid [2]	Invalid [2]	Invalid [2]	Yes [2]
Arizona	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Arkansas	Invalid [1]	Invalid [1]	Invalid [1]	No [1]
California	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Colorado	Invalid [1]	Valid [1]	Invalid [1]	Yes
Connecticut	Invalid [1]	Invalid [1]	Invalid [1]	No [1]
Delaware	Invalid [1]	Invalid [1]	Invalid [1]	No [1]
Dist. of Columbia	Doubtful [3]	Doubtful [3]	Invalid [3]	Doubtful [3]
Florida	Doubtful [3]	Valid [1]	Invalid [3]	Yes [3]
Georgia	Doubtful [1]	Valid [1]	Doubtful [1]	Yes [1]
Hawaii	Invalid [3]	Valid [1]	Invalid [3]	Yes [3]
Idaho	Invalid [2]	Valid [2]	Invalid [2]	Yes [1]
Illinois	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Indiana	Doubtful [3]	Valid [1]	Invalid [3]	Yes [1]
Iowa	Invalid [3]	Valid [1]	Invalid [3]	Yes [2]
Kansas	Doubtful [3]	Valid [1]	Invalid [3]	Yes [1]
Kentucky	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Louisiana	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Maine	Invalid [3]	Invalid [3]	Invalid [3]	No [3]
Maryland	Invalid [1]	Invalid [1]	Invalid [1]	No [1]
Massachusetts	Invalid [1]	Invalid [1]	Invalid [1]	No [1]
Michigan	Invalid [1]	Valid [1]	Invalid [1]	Yes [1]
Minnesota	Valid [1]	Valid [1]	Doubtful [3]	Yes [1]
Mississippi	Valid [2]	Valid [2]	Doubtful [3]	Yes [3]
Missouri	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Montana	Invalid [2]	Valid [2]	Invalid [2]	Yes [3]
Nebraska	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Nevada	Doubtful [3]	Valid [1]	Invalid [3]	Yes [1]
New Hampshire	Invalid [1]	Invalid [1]	Invalid [1]	No [1]
New Jersey	Doubtful [3]	Valid [1]	Invalid [3]	Yes [1]
New Mexico	Doubtful [3]	Valid [3]	Invalid [3]	Yes [3]
New York	Valid [1]	Valid [1]	Invalid [1]	Yes [1]
North Carolina	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
North Dakota	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Ohio	Doubtful [3]	Valid [1]	Invalid [3]	Yes [1]
Oklahoma	Doubtful [3]	Valid [1]	Invalid [3]	Doubtful [1]
Oregon	Doubtful [1]	Valid [3]	Invalid [3]	Doubtful [3]
Pennsylvania	Doubtful [1]	Valid [1]	Invalid [1]	Yes [1]
Philippine Islands	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Porto Rico	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Rhode Island	Doubtful [3]	Valid [3]	Doubtful [1]	Doubtful [3]
South Carolina	Doubtful [1]	Valid [1]	Doubtful [1]	Yes [1]
South Dakota	Invalid [2]	Valid [2]	Invalid [2]	Doubtful [3]
Tennessee	Invalid [1]	Invalid [1]	Invalid [1]	No [1]
Texas	Invalid [1]	Valid [1]	Invalid [1]	Yes [1]
Utah	Invalid [2]	Invalid [2]	Invalid [2]	No [1]
Vermont	Invalid [1]	Invalid [1]	Invalid [1]	No [1]
Virginia	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Washington	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
West Virginia	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Wisconsin	Invalid [2]	Invalid [2]	Invalid [2]	No [2]
Wyoming	Doubtful [3]	Valid [3]	Invalid [3]	Yes [3]

[1] By court decision. [2] By statute. [3] No decision on the question.

UNIFORMITY OF MARRIAGE AND DIVORCE LAWS[1]

The usual requirements of the statutes governing marriage rightly comprehend certain well-known and general principles and differ only in minor detail. Briefly summarized these include: voluntary consent of the parties, age of consent, prerequisites regarding license, solemnization, etc., mental capacity, physical capacity, legal capacity. In the latter subdivision there is, in a general way, embraced, of course, all of the others, but it is used more strictly in a limited sense, as defining certain well known requirements not otherwise enumerated.

Voluntary consent of necessity is the basic principle of the marriage contract and is so recognized in all the laws upon the subject and is ever a part of the ceremony of wedlock. There could be no difficulty in incorporating this requirement in a uniform marriage law, otherwise in the case where the man marries under threat of prosecution for a statutory offense. This would be a minor matter affecting only a few pitiful cases.

Upon the question of the age of consent there is at present a wide divergence in the requirements of the laws of the various states, ranging from twelve years in the case of females and fourteen years in the case of males in the states of Kentucky, Louisiana, Massachusetts, Tennessee and Virginia to twenty-one years for both sexes in the states of Florida, Pennsylvania and Rhode Island. The consensus of opinion appears to be that the age of consent should be placed at that time of life when physical growth reaches completion or nearly so, and that it should not be fixed at a time of life when the youthful body is still in process of growth and

[1] From article by Governor James H. Hawley of Idaho. Governors' Conference. Proceedings. 1912: 162-73.

is yet immature. In the broader sense it is not essential that the states should have an absolutely uniform age limit,—the real point in this regard being rather for decision of physicians than of law-makers, and such an age fixed as would best tend to the welfare of the race. It is worthy of note to state that all recent legislation upon the subject tends toward the raising of the age toward twenty-one years.

It would appear the essentials of a marriage license law should be so well understood that one could be easily drafted that would appeal to the law-making powers of the several states, but while such a proposition was broached at the National Congress on Uniform Divorce Laws held in 1906 no action was taken and most strenuous objection was made to the draft submitted by the committee on resolutions. The salient features of these resolutions required two weeks publicity prior to the issuance of license; the full names of the parties and their respective places of residence; that no license issue where either applicant is a minor, without the written consent duly attested of parents or guardians; and that no marriage be solemnized without the presence of suitable witnesses, nor except upon license duly issued. These provisions, in the main, will commend themselves to investigators of this branch of the subject.

A. BERNSTEIN

As to mental capacity no one would think of drafting a marriage law without provisions excluding those afflicted with idiocy or insanity, and the matter needs no discussion.

The subject of physical capacity is one that is receiving the attention of the deepest and most profound thinkers of the race, and we can expect in the next few years what would now be considered as very radical legislation affecting this branch of the marriage laws. And why not? Which recalls Senator Borah's crushing admission to a critic of some proposed advanced legislation looking to the welfare of children, to the effect that the

government proposed to do for children what it had already done for calves and lambs!

The public prints are devoting much space to the discussion of sex-hygiene in its various relations to the human family; and law-makers are busily engaged in putting the result of increasing knowledge into statute law. Tabooed as this subject has been in the past and not altogether out of a false modesty, for despite the necessity for a more thorough understanding of nature's laws, men and women of the present age shrink from imparting this information to their children or from discussion in a promiscuous audience, it is becoming evident, as stated, that the immediate future will make a decided advance that will tend to the uplift of humanity. While this is the universal and well defined trend of modern thought it would be idle to suggest as a basis for a uniform marriage law the consideration of any other than the well established grounds now the basis of the more enlightened laws in the American commonwealths. Further exposition of this particular theme would be out of place in a general paper of this character, as it is a field for the most careful investigation by specially trained experts devoting their lives to the welfare of humanity.

Another subdivision of the subject in hand is given as legal capacity. Herein come the provision against miscegenation, consanquinity and affinity; and also such prohibitions as the denial of the right of remarriage of the guilty party where divorce has been granted upon certain grounds. There should be no difficulty in our law-makers framing uniform statutes covering this phase of the subject.

I deem it unnecessary to enter upon a discussion of that branch of the question dealing with fraud, ratification, bigamy and lesser subdivisions as not germane to the main issues involved.

The ante-nuptial causes for divorce or more properly

speaking for nullity of marriage, such as fraud, coercion, consanguinity, should all be provided against in the marriage laws, thus making the marriage void or at least voidable from the beginning; and these need no other reference in the expression of my views than I have already given under the first heading of this subject.

For post-nuptial causes the authorities are agreed and as I have stated the legislation of the several states practically provide for divorces upon the following grounds: Adultery, bigamy, conviction of felony, intolerable cruelty, wilful desertion for two years, hopeless insanity of husband, habitual drunkenness for two years.

It would appear that this list of causes would be sufficient to practically cover all cases requiring relief and would keep the courts sufficiently busy, and it is put forward by leading authorities as the very best possible basis for a uniform divorce code.

It must be apparent, then, as I stated at the outset, that the limitation of the jurisdiction of the courts to cases arising among the citizens of the state in which relief is sought would go farther to the remedying of the evils complained of than would changes in the fundamental law covering the grounds for divorce.

It is unnecessary in a brief review to enter into particular details as to the causes herein enumerated; as given they express not my opinion, but the combined wisdom of those who have given the subject of divorce and its attendant evils deep study and careful consideration, and will commend themselves to all interested in the subject.

As to adultery and bigamy, there can be no qualifications, as they are direct violations of the spirit and the letter of the marriage contract. Upon the subdivision, conviction of felony, it is urged that this should not be a cause unless followed by continuous imprisonment for at least two years, and unless the conviction was through trial by jury in a state or foreign country

wherein the laws are practically in harmony with that of the state in which divorce is sought.

As to insanity as a cause for divorce, the most advanced thinkers would limit this provision to hopeless insanity of the husband, and to this extent it may have to be recognized, although some old-fashioned folk like myself would regard the marriage tie as binding in sickness as well as in health and that insanity is but a disease; and the only argument that can properly be presented in favor of this cause for divorce is to prevent the birth of children liable to be tainted with the same disease. The care of an insane wife should devolve upon the husband just as much as though her ailment were paralysis or some other equally great malady of the body.

Desertion and habitual drunkenness should only be causes for divorce if persisted in for a stated period—the consensus of opinion placing this period at two years.

Some minor and yet necessary details for a uniform divorce code deal primarily with court procedure and can be briefly enumerated as given by the authorities upon this branch of law:

No divorce should be granted unless the defendant has been given full opportunity for his day in court, if possible for such notice to be served.

A person named as co-respondent should in all cases be given an opportunity to interplead.

A power of attorney, duly acknowledged, should be before the court, and not before any delegated representative of it.

Affirmative proof should be required aside from any admission on the part of the respondent.

There should be a lapse of a reasonable time, preferably at least one year, before the decree should be entered to permit the remarriage of either party.

Under no circumstances should the children of the marriage union be bastardized excepting as they are the offspring of bigamous marriage or the facts permit of no other recourse.

MARRIAGE AND DIVORCE[1]

It is not my intention to discuss the wisdom or policy of laws of divorce. They have existed from time immemorial. There might be, if human nature should suffer severe organic changes, an ideal state of society in which laws would be unnecessary, but as it does not exist we may as well, while not relaxing our efforts to bring about so desirable a pass, accept facts as they are and not refuse remedies for present evils, because they clash with imaginative ideals of what we would like the world to be. Marriage being a contract, although of an exceptional and peculiar nature, is as much entitled to a remedy when a breach occurs as any other contract.

People will make mistakes in marrying as well in other things; irreconcilable tempers will occasionally mate; time and change of circumstances will bring out traits which in the halcyon days of courtship and honeymoon, when only the better side of our natures and dispositions are on exhibition, are not thought to have an existence; and there is no infallible method, when passion holds sway and love has blindfolded our eyes, by which we can ascertain the true and entire character of a partner.

Marriage was instituted for certain well-defined purposes; and when it fails entirely of these, instead of contributing to good conduct and order and the welfare of the body politic, rather does the contrary; consequently its objects are not attained, its reason ceases, and society is not benefited. Why then, since such cases must exist to a greater or less degree, should the contract be iron-clad and absolutely indissoluble? Of what sense is it to compel people who cannot possibly get along together to live as husband and wife? Is it not true that under such circumstances perpetual discord must exist;

[1] By Milton Ives Livy, Attorney at Law, New York. The Author, 922 Woolworth Building, New York. May, 1924.

that among the lower and more brutally organized classes, at all events, there must be breaches of the peace and serious infractions of the criminal law; and among all classes temptations to adultery? Is it not equally true that "children born during a discordant cohabitation have their natures tainted by it, while their education is not apt to be of a salutary character?" And, in the language of Judge Swift, is it not "therefore the best policy to admit a dissolution of the contract when it is evident that the parties cannot derive from it the benefits for which it was instituted, and when instead of being a source of the highest pleasure and most enduring felicity, it becomes the source of the deepest woe and misery?"

There are a great many intelligent and respectable people who, fortunately happy in their domestic relations, look upon divorce as an unmixed evil, and oppose any change in the laws—an attitude which counteracts any attempt to correct the mischief arising from the clashing of the policies and legislation of our various states, for fear it would compel a further recognition of the principle itself. To them the statistics of divorce and its increase present only additional evidence of the immorality of the age in which we live. There is always a certain class who ignore history and see in the ages which passed into oblivion a utopia of goodness, a lost paradisial existence, and in their own times an era of demoralization and sin. Whereas the truth is that the world has always been and is continually improving; and they who cannot see that the good vastly preponderates in it are victims either of physical or mental dyspepsia. The so-called statistics which have of late been given to us are often misleading, and consequently unwarranted and false.

The choice lies between divorce and something worse. In South Carolina the marital tie is indissoluble, but is South Carolina any better, socially than our own state of New York or any other state which has far more

generous laws on divorce? Statistics would seem to indicate that South Carolina with its denial of divorce, makes for loose morals in that concubinage and left handed marriages with all its attendant evils are very prevalent and there are more illegitimate children born in that state in proportion to its population than in any other state in the Union. Here we have a state which refuses emphatically to recognize the fallibilty of the marriage tie—refuses to enact laws granting divorce, but is South Carolina any more moral, than any other state if indeed it is equally so?

It has been the boast of South Carolina that no divorce was ever granted by her laws. Yet she has never made adultery indictable, and actually found it necessary to enact a statute regulating how much of his property a married man might be allowed to give to his concubine! It is obvious that South Carolina has not much to boast of.

But however we may differ as to the policy of divorce laws, we can all agree that a system such as exists in New York state—which results frequently in parties being regarded as divorced in one state, but not in another; in a marriage being valid in one state, but invalid elsewhere; in a child being a lawful heir in Ohio, but illegitimate in New York; and under which it is possible for a man to have several wives at once in different parts of the union—is a disgrace to our civilization.

This state of affairs has been brought about mainly by the different judicial views taken of the question, "What effect should be given to a foreign (and in this sense our states are foreign to each other) divorce?" Before examining this question, let us look at a peculiar condition of things which arises in New York, owing to her laws affixing a penalty to a judgment of divorce for adultery, by which the guilty party is forbidden to re-marry during the lifetime of the other. What can possibly be the wisdom of a prohibition which does not

prevent a marriage being contracted in another state and being perfectly valid there, and which, intended as a punishment to an offender, in addition to raising difficult questions, has invariably operated to punish helpless children and the innocent rather than the party upon whom it was laid; and this must be in the nature of things.

With all due respect I may be permitted to say that the prohibition is based upon false reasoning, and is an absurdity. Let us see how it works. A procures a divorce from B in New York; the statutory disability of re-marriage attaches then to B. Now if B marries again in New York he will commit a felony, and the marriage will be void. If, instead of this, he goes to any other state and marries there, as he has a perfect right to do, and then goes back to New York to live, he cannot be punished as for a crime, because penal disabilities are local in their nature, and do not extend beyond state lines, and do not follow the person; but he will have a wife in the other state who would cease to be his wife when he reached New York, and whom he could then at his pleasure abandon: and she, the entirely innocent party, who may have acted perhaps under legal advice perfectly sound where it was given, would be the sufferer. The policy of a law which operates in this way is at least questionable.

Some of the states recognize fully a divorce granted in another state after the circumstances described; but others, as New York, limit the seeming force of these provisions, and say on general principles that the question of jurisdiction is always open—and if the court has exceeded it, or has not obtained jurisdiction of the parties, its proceedings so far as another state is concerned are *coram non judice*, and void. This is not to be taken too broadly. If the court had jurisdiction of the subject matter and actually of the parties, the New York courts concede that the judgment cannot be at-

tacked because it is evidently wrong or not in accord with the evidence. In such a case the facts cannot be reviewed, or the question raised as to whether they square with the grounds of divorce created by the statutes. There seems to be, however, some doubt even about this; for in a Massachusetts case the court did refuse to recognize a divorce granted in Maine under a special statute, undertaking to declare the statute unconstitutional.

If the court has jurisdiction over both the parties, the place where the marriage was consummated is immaterial—as is also the place where the delictum occurred, except in New Hampshire. It is generally held to be enough if only one party was domiciled in the place where the action was brought, provided the other party appeared; but when the other party does not appear, or is not within the juridiction of the court except by "constructive" service—that is, the usual "service of publication," as it is called—question and difficulties arise; for it is not correct law, as asserted by Mr. Bishop, that a valid divorce—by which I mean one that will be recognized by all the states—can be had, although the court has jurisdiction over one party only. Now in the majority of actions brought for divorce only one party is within the court's actual jurisdiction; and this is the effect of many causes, but principally of the fact that the laws of some states are more liberal than those of others. The effect which a decree of divorce granted under such circumstances—and it is a method of procedure in daily practice and common to almost if not quite all the states—shall have, has given rise to much discussion and dispute. The divorce would certainly be perfectly good and binding where granted; but how will other states regard it? The Constitution of the United States provides that "full faith and credit are to be given in each state to the judicial proceedings of every other state, and the effect thereof may be prescribed

by general laws of Congress." In pursuance of this provision Congress has prescribed that they shall have such effect in every court within the United States as they have by law or usage in the courts of the state in which they are taken.

The current of the New York decisions is to the effect that the courts of another state cannot dissolve the matrimonial relation of a citizen of New York who, during the pendency of the proceedings in the other states, was domiciled in New York, and did not voluntarily appear, but was served in the usual "publication" method. In a late case, urged on by its peculiar facts, the court stretched its doctrines somewhat and said:—

> It is our conclusion, whatever grounds may be stated, that in a suit of divorce a valid judgment in personam, so as to effect a dissolution of the marriage contract which shall be prevalent everywhere, may be rendered against a defendant not within the territorial jurisdiction during the progress of the suit, if that be the place of his citizenship and domicile, though process be served upon him only in some method prescribed by the laws of that jurisdiction as a substitute for personal service and though he has not voluntarily appeared.

But at the very next opportunity, which was not long in presenting itself, the same court took occasion to reiterate its old doctrine, and to limit the effect of its decision in the Hunt case: which case it said "was close," and added, "We meant to keep the reach of our judgment within the bounds fixed by the facts in that case."

The facts of this last case are so remarkable, and it illustrates so strikingly the severe results to which our divorce laws lead, that I shall state it a little at length. It is somewhat surprising that it has escaped general attention.

In the year 1871 Frank Baker married Sallie West, in Ohio. She afterward brought an action against him in that state, and a judgment was rendered dissolving the marriage on the ground of "gross neglect of duty." There was no personal appearance by him in that case,

but the process was served upon him by publication. By the Ohio statute it appeared that the proceedings were regular and sufficient, and the judgment valid and binding under the laws of that state. In November, 1874, Sallie West being still living, Baker married one Miss Nelson, at Auburn, New York. He was then indicted for the crime of bigamy, and convicted in the Court of Sessions. The General Term of the Supreme Court reversed the judgment; but the Court of Appeals reversed the decision of the Supreme Court and affirmed the conviction, refusing to recognize the Ohio divorce as valid. Says Chief-Justice Folger:—

> We must and do concede that a state may adjudge the status of its citizen toward a non-resident, and may authorize to that end such judicial proceedings as it sees fit; and that other states must acquiesce, so long as the operation of the judgment is kept within its own confines. But the judgment cannot push its effect over the borders of another state, to the subversion of its laws and the defeat of its policy; nor seek across its bounds the person of one of its citizens, and fix upon him a status against his will and without his consent, and in hostility to the laws of the sovereignties of his allegiance . . . . If one state may have its policy and enforce it on the subject of marriage and divorce, another may. And which shall have its policy prevail within its own borders, or shall yield to that of another, is not to be determined by the facility of the judicial proceedings of either, or the greater speed in appealing to them. That there is a great diversity in policy is very notable. It does not, however, seem to tend to a state of harmonious and reliable uniformity, to set up the rule that the state in which the courts first act shall extend its laws and policy beyond its borders, and bind or loose the citizens of other sovereignties . . . It is better by an adherence to the policy and law of our own jurisdiction to make the clash the more and the earlier known and felt, so that the sooner may there be an authoritative determination of the conflict.

Answering the argument that it is not in good grace for the court to refuse to recognize the divorce when the laws of its own state provide for the giving of such a judgment against a non-resident by like substituted service, the Chief-Justice says:—

> This is but to say, that, on the principle of the comity of states, we should give effect to this judgment. But this principle

is not applied when the laws and judicial acts of another state are contrary to our own public policy, or to abstract justice or pure morals.

It will be observed that the marriage was contracted and annulled in the same state, Ohio; that the divorce was in accordance with the *lex loci contractus* and the *lex fori;* that it was procured, not by Baker, but by his wife; and that he did not question or attack it. How was he to know that a divorce procured by his wife in Ohio was not a divorce in New York; that though Sallie was not his wife in Ohio, but possibly some other man's she was his wife in New York; that he was at liberty to enter the matrimonial market in Ohio or in Maine, which states would recognize him as a divorced husband, but not in New York? Certainly no lawyer in Ohio, if any in New York, would have answered him negatively had he inquired whether he was at liberty to marry. Nevertheless he found himself sentenced to the state prison for bigamy.

A harder case than this, so far as it appears, it would be difficult to conceive. It affords us, however, a splendid illustration of the workings of our divorce laws. Let us look at it from a few different standpoints. If Baker's wife had procured her divorce in a similar manner in New York, and he had then married Miss Nelson in that state, he would have no wife in New York, but he would have been guilty of a felony. The courts left him with Miss West as his wife in New York, but with no wife in Ohio. If he had married Miss Nelson in Ohio, she would have been his wife there; but when he came to New York he could have deserted her with impunity, for Miss West would then have been his wife, although she might have had another husband in Ohio. If he had married Miss West in Massachusetts, and she had procured the divorce from him in New York, and he had then married Miss Nelson in Ohio, he would then have had Miss Nelson as his wife when he was in Ohio, Miss West as his wife when he was in Massachusetts, and no

wife at all when he was in New York. If, having married Miss West in Massachusetts, she had after the divorce remarried in Ohio, and Baker had obtained, as he then could have done, a divorce from her in New York on the ground of adultery, and he had then married Miss Nelson in New York, and again, afterward, Miss Nelson had procured a divorce similar to Miss West's in Rhode Island (or any state which maintains Mr. Bishop's proposal), and then Baker had married Miss Smith there, the result would have been Miss Nelson as Mrs. Baker in New York, Miss Smith as Mrs. Baker in Ohio and Rhode Island, and Miss West as Mrs. Baker in Massachusetts. The birth of children would have given rise to numerous other complications.

As it was he innocently got himself into trouble which he might have avoided had he simply crossed the Hudson River into New Jersey, and had the marriage ceremony performed there. The amount of evil which, had he been versed in the intricacies of law and been so disposed, he could have done without running any risk of the state prison is painfully evident.

We thus have prevailing in the United States a system of laws which, as already stated, allow of parties being divorced in one state but not in another; of a marriage being valid in one state but invalid elsewhere; of a child being a lawful heir in one and illegitimate in another; and of a man, not a Mormon, having two legal wives, changing one or the other according as he moves from one state to another—and which, as we have seen, operates to make those entirely innocent the principle sufferers.

The question remaining is, What is the remedy? The one generally suggested is that the causes for divorce be made uniform throughout the United States by a constitutional amendment. (At present Congress has no power to pass a general law of this kind.) The obstacles in the way are apparently insuperable and the

objections numerous. It is true that while it is natural and to be expected that different nations living under different forms of government, surrounded by different circumstances, and existing under different social conditions should differ in their views, the spectacle of component parts of the one nation having severally different systems and regulations on a question affecting the personal status of a citizen of the nation, presents an absurd anomaly. Yet who is to say which of these states is right—the one which admits of but a single cause for the dissolution of the marital tie, or the one which sees other causes in addition? And which of these states is likely, or would be willing, to give way to another in its views in regard to the grounds on which a divorce should be decreed? It is improbable that such an amendment would be ratified. It would further meet with violent opposition from the large number of people who would see in it a long step toward their *bete noir*—centralization. But it is unnecessary to discuss this point—because, in the first place, such an amendment is not needed; and, secondly, it would not afford the required remedy. We can, I think, do away with the evils without asking any state to decrease or increase the causes for which its laws allow for divorce, or requiring it to accept the views of another state upon this question of policy; for while it is true that a liberal policy induces those who desire to cast off the matrimonial yoke to seek that state which affords the relief which their own denies, yet the complications I have pointed out are not the result of the grounds of divorce, but of the judicial constructions which have been placed upon the question of jurisdiction, and upon the question of the effect of a foreign divorce where the court granting it had actual jurisdiction over only one of the parties to the suit, and the other not being domiciled in or a citizen of the state, was constructively served with process, and did not actually appear.

To an inter-state convention to make the causes for divorce uniform, which has likewise been suggested, what has been said also applies, and for the same reasons. There is, further, another objection applicable; and that is, unless the state constitutions were amended, any and every succeeding legislature could revoke the laws enacted by its predecessor.

If the Supreme Court of the United States were to decide in a proper case that such a judgment as the one given in the Baker case, in Ohio, was absolutely binding on all the states, it would settle the question. In a measure, such a decision would be arbitrary, and would not, in the existing state of the law, meet with universal approval. Further than this, it might cause much trouble and many difficulties; for it should be remembered that courts do not make the law, but simply declare it; and when they declare it, it operates, theoretically at least, not as a new principle—although practically it may be such, affecting only the case before the court, and such as may afterward arise—but is accepted as always having been the law of the particular point or principle passed upon, and previous enunciations, if they differ, are regarded as having been erroneous. It may be added, that so far as the Supreme Court has gone it has sustained the views of the New York courts.

Is there then no remedy which does not present reasonable objectionable features, and which would be likely to meet with general approval? I think there is; and after careful consideration submit two suggestions:—

1. The Constitution of the United States provides that the effect of the judicial proceedings of each state in every other state may be prescribed by general laws of Congress. The ready and at once available remedy is to be found in this clause. It is for Congress to pass a law declaring, in effect, that every judgment of divorce rendered by a state court of competent jurisdiction, and valid under the laws of the state, shall be of full force

and effect and unquestionable, except for actual fraud practised upon the court which granted it, in every other state—provided that the court granting it had actual jurisdiction over both parties or provided that the marriage which it dissolves was contracted or consummated in the state the courts of which rendered the judgment; and so far as the status of any child or children may be affected, no judgment of divorce, valid under the laws of the state where it was rendered, shall in any wise be questioned or disregarded.

2. A constitutional amendment practically to the same effect but asserting it affirmatively by prohibiting the granting of a divorce when both parties are not within the actual jurisdiction of the court, except by the courts of the state where the marriage was contracted or consummated.

So far as the present power of Congress extends, and as the laws stand, the first is the only practicable remedy which suggests itself. It will be observed, however, that it is not quite complete; because it is somewhat negative in its character, and does not absolutely prevent the granting of a divorce upon "constructive" service, or compel the recognition of such a divorce when granted by the courts of a state where the marriage was not contracted or consummated. For this reason the second is preferable, although it is a matter of more difficulty, and is apt to meet with some opposition from many who might urge that the subject is beneath the dignity of a constitutional amendment and that it would perhaps be slightly of a "centralizing" character; objections which, however—and it is said with all due deference and respect—it would seem might not to meet with the sympathy or concurrence of reasonable minds. An amendment of the states' constitutions would serve the purpose equally well; but not a simple statute unless there were a guaranty, which there could not be, that it would not be tampered with for the benefit of individual cases.

What objections, of sufficient weight to counterbalance the general benefit and public good, can be urged against a remedy of this kind it is difficult to perceive. Congress should at once pass a law on the nature proposed; and then, if possible, the second suggestion should be carried into effect. On the one hand, no state is asked to give way to another, or to change its policy or its ideas of what are the proper causes for divorce, a simple question of practice only is affected. On the other hand, a check would be put upon promiscuous divorces, because they could not be so easily obtained; ignorance of the law, or the fact that legal advice perfectly correct where given was followed, could not be pleaded; men and women could not unwittingly involve themselves in complications; and, over and above all, the rights of innocent children would be protected in all cases, and they themselves would be spared the blasting stigma of illegitimacy. It is the greatest misfortune of our present system that the law, in its judicial and legislative sources, pays so little attention to the resulting consequences of the conflict as it affects the legitimacy of offspring and the duty of support. The question of the legality of cohabitation should be separated at least from the question of the legitimacy of innocent offspring, begotten not in meretricious commerce, but in an apparently regular matrimonial union; and if we cannot for any reason have the constitutional amendment, at all events let us have the proposed law, which it is within the present power of Congress to enact and which would, if it did nothing else, accomplish this devoutly to be wished for consummation. But the second remedy is preferable, because with the abolition of the absurd prohibition in force in New York, it would completely do away with the present state of affairs so disgraceful to our civilization, and bring order out of chaos. It still leaves to a deserted wife or husband who cannot serve process upon an absentee offender an opportunity to procure a divorce in the state where he or she was

married. It may be said that sometimes this might work a hardship, owing to a party's lack of means; but this is an ordinary case. The law offers to all the same remedies and redress, but it provides no one with money to carry on a litigation; and the poor suitor is compelled to submit to an erroneous decision, honestly given or not, which the wealthy one is able to have corrected by an appeal to a higher tribunal. Further, to every man and woman it is left to marry in that state whose policy of marriage and divorce best suits his or her inclinations.

Until this hoped for consummation of a constitutional amendment and Federal law as advocated in the previous chapter is an accomplished fact and part of our Federal statutes, all of which is very remote, we must agitate for a more logical, fair and progressive law in New York state. Society has so far developed in its process of evolution, that the bigotry of the dark ages is almost a thing of the past, greater freedom of divorce today is due to a broader religious and social thought; to the larger opportunities women now enjoy, to modern, social and economic conditions and to the increased importance attached to the happiness of the individual. Divorce is a remedy, not a disease, its increase, even if a symptom, is not a cause of decadence. Stricter laws do not make less divorce, they do not improve morals; this is shown by the history of the Middle Ages; when the doctrine of the indissolubility of marriage was uniformly accepted, family morals were worst. It is shown by the experience of France and of South Carolina. Considerable freedom of divorce is necessary to maintain the dignity and stability of the marriage relation; our strict New York state laws, makes for deplorable social conditions, one of its evil effects is the migration for the purpose of divorce of numerous couples to Nevada and France and other countries, only the rich can afford this and their example to the rest of the community makes for discontent, and a sharper demarcation between the rich and poor.

In respect of morality, the effect of our present law is deplorable. A properly-framed law, whether it admits divorce or not, should at least ensure that those who flout it should suffer gross inconvenience, even if they are not punished, which is the logical course. Yet thousands upon thousands of men and women are living together in New York state as husband and wife, one or both of whom are validly married to other spouses, and our present law is loftily indifferent.

UNITED STATES OF MATRIMONY[1]

The law is a mighty jester, though its mirth occasionally partakes of the "acrid Asiatic" quality mentioned by Mr. Kipling. Here is one of its merriest jests.

Can a man be both married and single, a woman both the wife and the mistress of the same man, children both legitimate and illegitimate—all at the same time?

And the point of the jest is that he, she, and they—can be.

Absurd? Not a bit. It is eminently logical.

Infrequent? A mere academic possibility? Not at all.

It is the condition of thousands of our fellow citizens, who, finding the laws of their own commonwealths not sufficiently favorable, have traveled to Nevada, Washington, and other "easy divorce" states. The awful results are only beginning to be felt, and not even beginning popularly to be realized. When, in a few years, some of the many who have divorced and remarried under the present easy-going régime, die, and their estates are in process of settlement, complications will be endless. Women will learn that they

[1] By H. Gerald Chapin, of the New York Bar. Everybodys. 33: 341-7. September, 1915.

are not widows, men that they are not husbands, children will be forced to bear the bar sinister.

Every man and woman who contemplates a trip to Reno or Seattle should thoroughly understand beforehand that the decree which may be handed down is, in many states, just a worthless paper.

And what of those who have found this out too late?

Take the case of Mrs. Kimball, or rather Mrs. Semon. She married Mr. Semon in the state of New York in 1885. Five years later she went to North Dakota, and after remaining ninety days brought an action for divorce. The papers were handed to Mr. Semon in New York, but he did not appear in the action by an attorney, and the North Dakota court granted Mrs. Semon her divorce. In 1891 she returned to New York, and four years later went through a second ceremony of marriage, with Mr. Kimball (just notice that we did not say she "married" him). A year later Mr. Kimball died, leaving no will.

What then did the law say was the situation of this woman?

The rendition of the North Dakota decree made her a divorced woman in that state, and North Dakota gave her the privilege of remarriage. But in New York she was still the wife of Mr. Semon. Her relations with Mr. Kimball were adulterous. Nor had she a scintilla of claim to his property. His collateral relatives alone could inherit.

So said the New York Court of Appeals in 1908.

Notice that Mr. Semon had refused to set foot within the territorial limits of North Dakota. This is what the recalcitrant spouse usually does. So, to meet the difficulty, practically every commonwealth has placed a law on its books allowing the summons to be served on a non-resident by publishing it in a newspaper and mailing a copy, or it may be by handing it to the

other party outside of the state. But suppose the delinquent does not appear in the state in person or by attorney, and allows judgment to be obtained by default. Such a divorce is, of course, good within the limits of the state granting it. But whether other states will recognize this is another question.

In other words, every state in this country save South Carolina is today granting divorces against non-residents on mere service by "publication" or without the state. Yet many of them refuse point-blank to recognize decrees granted in other states.

The chief participants in this edifying and solemn proceeding—the judge who signs the decree, the attorney who procures it, nay, the very clerk who files it away—knows this. Sometimes we may even find a client who likewise knows it.

Here is one of the strongest counts in an indictment of the so-called "divorce evil." Pulpit and press may deplore the "increasing tendency." Governors in convention assembled may seek to reconcile the policies of their states, which range all the way from that of South Carolina, where divorce is impossible for any cause after marriage, to that of Washington, where a decree will be rendered "for any other cause deemed by the court sufficient," and Kentucky, where one of the grounds is "living apart" for five consecutive years, it being immaterial that the separation was due to the fault of the party subsequently seeking the divorce. The American Bar Association and lesser bodies may attempt to draft a uniform law. In all this agitation, a vital question still remains untouched, though judicial reports are filled with cases which show that failure to accord recognition to the decrees of other states has brought about a condition only to be described as appalling.

Why is this? To understand the reason we shall be obliged to examine a few of the decisions. Our law is

built upon precedent. But don't be alarmed. We'll try not to make this story of a legal jest too much like a lawyer's brief.

To begin with, the Constitution of the United States solemnly declares that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state." *But* this presupposes, so the Supreme Court has interpreted, that the state rendering the decree has jurisdiction.

Now note the result of this "*but.*" See how criminally absurd it is to believe that a court can do what it says.

In 1871, Frank M. Baker married Sallie West in the state of Ohio. Mr. and Mrs. Baker moved to Rochester, New York. A few years later Mrs. Baker went to Ohio and obtained a divorce from her husband on the ground of "gross neglect of duty." Mr. Baker remained in New York, did not personally appear in the Ohio action, and process was served on him by "publication." Believing that he was a divorced man, in 1874 Mr. Baker married again in New York, and the Court of Appeals of that state held that he had committed bigamy.

It is only fair to say that some states are more liberal. Take California, for instance. Mr. and Mrs. James married in New York in 1859. In 1871 they separated. Mr. James went to Missouri, and in 1874 obtained a divorce there. Then he went to California, and in 1883 married again. Subsequently he died, and Wife No. 1 began proceedings in California to obtain letters of administration there. But she lost, for the Supreme Court held that the divorce was perfectly good and that it was Wife No. 2 who was entitled to letters.

Here we have an interesting problem. In this case California and Missouri both said that Mrs. James No. 2 was the lawful wife, while New York says that the title belongs solely to Mrs. James No. 1. Pennsylvania had this question before its Supreme Court in 1890,

and in line with New York it would consider Mrs. James No. 1 to be the wife; while Massachusetts, on the other hand, would say it was Mrs. James No. 2.

New Jersey and Georgia both say that they are not obliged to recognize the decree granted in another state, but they will do so provided that the ground on which it rests is not against the public policy of these states, respectively. This is really not a bad doctrine. Probably it is the best of the lot, although a trifle indefinite; for, as the New Jersey judge pithily observed:

> A condition of the law which makes the relations of a man or woman either legitimate or adulterous as they happen to be within the limits of one state or another, is not to be tolerated any further than is plainly required by public policy.

Now let us see what the Supreme Court of the United States, that august tribunal, said about the question in the celebrated Atherton and Haddock cases.

Mrs. Atherton had been married in 1888 at Clinton, New York. Mr. Atherton lived in Louisville, Kentucky, and after the wedding the couple took up their residence in that city. Three years afterward, Mrs. Atherton left her husband "owing to his cruel and abusive treatment," and returned to New York. A year later Mr. Atherton brought an action against her in Kentucky for an absolute divorce on the ground of abandonment, and obtained a decree in 1893. Then Mrs. Atherton sued in New York for a separation on the ground of cruelty, and the question was whether the Kentucky decree was a bar.

The New York Court of Appeals, on the strength of the Baker and similar cases, said it was not, and that Mrs. Atherton was and always had been a married woman. Hence she was entitled to her separation in New York.

But this, says the Supreme Court of the United States, is wrong. True, the tribunals of one state have no power to pass upon the status of a citizen of another state, but (and here the court gave a new twist to the

subject) we will call the last home where the parties lived together as husband and wife their "matrimonial domicile," and the courts of that state have jurisdiction to determine what the status of both may be, even though one of them might not be served with process within its borders.

For which reason, as Louisville had been the last joint home of Mr. and Mrs. Atherton, the Kentucky courts had jurisdiction to declare Mrs. Atherton an unmarried woman. So she could not bring an action for separation in New York as she was divorced already.

Just notice the difference between this case and the matrimonial entanglements of the Haddocks. Mr. Haddock was divorced in Connecticut, Mrs. Haddock remaining all the time in New York. Afterward he returned to New York and Mrs. Haddock sued him for a separation.

This was a tough proposition, and the Supreme Court divided over it. Mr. Justice White, who wrote the prevailing opinion, said in effect that this case was not a bit like that of Mr. Atherton. The Haddocks' last home was in New York and their "matrimonial domicile" was there. So the Connecticut court had no authority to say that Mrs. Haddock was not the wife of Mr. Haddock, and New York could do as it pleased about recognizing the decree, so far as she was concerned, which it wouldn't and didn't.

But Justices Holmes, Harlan, Brewer, and Brown said in effect: "Oh, no, we do not see any reason why we should have given effect to the Atherton divorce, when Mrs. Atherton was not a citizen of Kentucky, and refuse to give effect to Mr. Haddock's decree. That divorce, everybody admits, was good in Connecticut, and it ought to be good everywhere," though Justice Holmes thoughtfully added: "I do not suppose that civilization will come to an end whichever way this case is decided."

Of course, the state courts are bound to take their law on constitutional questions from the Supreme Court of the United States, and the Atherton and Haddock decisions stirred up a pretty controversy as to just what was meant thereby.

The matrimonial affairs of the Olmsteds came before the New York Court of Appeals in 1908. They had been married in New York. Afterward Olmsted, despite the fact that his wife was living, went to New Jersey and joined in a marriage ceremony with one Sarah Louise Welchman, by whom he had two children. The couple afterward went to Michigan, and re-married after Olmsted had obtained a divorce from his former wife. Then Olmsted's father died, leaving a will by which he gave a share of his property to his son for life, which was after his death to vest in Olmsted's *lawful issue*.

A Michigan status similar to that of New York provided that the subsequent marriage of the parents would make legitimate the children previously born. But, said the New York Court of Appeals, as the Michigan tribunal had never obtained jurisdiction over Mrs. Olmsted No. 1, the divorce could not be recognized. Mrs. Olmsted No. 2 was not his wife, and Mrs. Olmsted No. 1 was—we don't care what Michigan says!

Hence, as Mr. Olmsted already had a wife, the Michigan marriage was polygamous and void. There being no marriage, there could be no legitimization.

Now, although the United States Supreme Court affirmed the judgment of the New York Court of Appeals in the Olmsted case, this was upon the ground that the Constitution did not require New York to give effect to Michigan legislation which would operate to control the title to New York lands. It still remains for our highest Federal tribunal to tell us more definitely what would have been the status of any woman that Mr. Haddock might have married in Connecticut.

If the court granting the decree has authority to

determine whether the individual before it is married or unmarried, *so far as he or she is concerned*—a question still unanswered—then why is not a re-marriage within that state perfectly good, since it is the general rule that a marriage valid where solemnized is valid everywhere? True, the New York court says that this does not mean polygamous marriages; but for a marriage to be polygamous it might well be argued that the party contracting it must already have had a lawful wife *recognized as such by the state where the marriage took place;* and Mr. Haddock, if he had married in Connecticut, would have had no legal wife there at the time of his marriage.

Of course, such an argument leads to this result: If Mrs. Haddock No. 2 is Mr. Haddock's lawful wife, to be recognized as such all over the world, then Mr. Haddock in the state of New York has two lawful wives, since the status of Mrs. Haddock No. 1 has not been affected, and by repeating the process he might acquire an indefinite number. Only Mrs. Haddock No. 1, as we have seen, would be entitled to dower in New York lands.

But a very interesting question might arise with regard to the devolution of personal property which by the general rule is governed by the laws of the domicile of the deceased owner, and also with regard to criminal prosecutions for adultery. The Illinois Supreme Court, criticizing the conviction of Mr. Baker in New York, said that "the effect was that the wife on removing to New York would be a single woman who might lawfully marry, while the husband was a married man, having for his wife a woman who might at the same time become or be the lawful wife of another man." But the New York Court of Appeals in Mrs. Olmsted's case cut the knot by saying that it would not recognize the divorce even so far as a non-resident was concerned.

Now if we take the other horn of the dilemma and say that the New York Court of Appeals was right,

then the monstrous result is reached that a lawful wife is converted into a mistress at the passage of a state line, and children are legitimate in one place and illegitimate in another. From present indications that is what the Supreme Court of the United States will probably hold when the question is squarely presented.

Just look at one more case which came before the Appellate Division of the New York Supreme Court in 1913. Mr. James P. Berney married in Pennsylvania in 1883. The couple thereafter removed to New York, where they resided until April, 1902, at which time Mr. Berney abandoned his wife and two children, refusing to contribute further to their support. Mrs. Berney went to Sioux Falls, South Dakota, where she obtained a divorce, the summons and complaint having been served upon Mr. Berney in New York.

Thereafter she returned to New York, and in July, 1909, went to live in New Jersey, where in March, 1910, she was married to Mr. Benjamin Adriance. This marriage was good in New Jersey. Then Mr. Adriance and she who was Mrs. Adriance in New Jersey and Mrs. Berney in New York, were so ill-advised as to return to the latter state. Then Mr. Berney sued Mr. Adriance in New York for criminal conversation. There must have been a peculiarly intelligent jury, because, after listening to the evidence, the foreman announced: "We find a verdict for the plaintiff in the nominal amount of $2,500."

Then the case went up on appeal. The Appellate Division said that it would pay no attention to the South Dakota decree or the New Jersey marriage. The lady was still the wife of Mr. Berney in New York, although it was conceded that she was the wife of Mr. Adriance in New Jersey. Therefore, Mr. Adriance had been guilty in New York of improper intimacy with Mrs. Berney. So the law was with the plaintiff, but the court thought that the jury had rather strange ideas as to what

constituted a nominal verdict, and, in view of Mr. Berney's behavior, they set it aside as excessive, though admitting that he was entitled to something.

The man or woman who flies from New York to Reno fondly imagines, after receiving a decree, that he or she is no longer husband or wife. As a matter of fact, the expense of the trip might as well have been saved. If the person marries again in New York, it would appear that he or she could be sent to jail for bigamy. Certainly the other spouse can, just as Mr. Baker was, assuming, of course, that both were not before the Reno court. Again, if either marry beyond the state limits and return, there is a risk of criminal prosecution for adultery.

Incidentally, we may pause to remark that there is another fact to be considered in answering the conundrum: When is a divorce not a divorce? It is well-settled law that if a husband or wife seek the jurisdiction of another state for the sole purpose of obtaining a divorce, without any bona-fide intention of acquiring there a real home (or, to borrow the legal expression, "domicile"), goes, in other words, just for divorce purposes, then the decree, having been fraudulently obtained, will not be recognized anywhere.

Usually decrees recite that the plaintiff resides in the state; but this makes no difference, for no court can acquire jurisdiction by merely saying that it has it.

As to the amount of blackmail made possible by the present condition of affairs—nay, the amount which in all probability is actually being levied at the present time—the reader may draw on his imagination, feeling assured that his wildest guess will not prove to be far from the truth.

The pretended marriage, with all its attendant shame and misery, has been a fertile subject for the novelist. American women who contemplate the international alliance have time and again been warned that the laws in many countries of continental Europe

refuse to recognize ceremonies not in accordance with their forms. But the woman who procures a foreign divorce and then remarries may, when her new mate repudiates her, discover for the first time not only that she has no rights which he is bound to respect, but that she herself is a criminal.

IS DIVORCE A SOCIAL MENACE?[1]

Divorce, in fact, is not the destruction of marriage—divorce only "re-assorts the couples," is a Shavian defense of divorce as a "sacramental duty" and an instrument for moral elevation.

Equally extreme is the antithetical attitude maintained daily in the articles one reads, in the sermons one hears, and in the conversations one shares. A great emotional outcry is raised on every side against this modern menace of divorce that is "rotting at the core of our civilization and spreading rapidly its disintegrating destruction"—and so on *ad infinitum*. To substantiate this attitude, some such incomplete generalization as the following is advanced: That in 1867 the divorce rate in the United States was one to every seventeen marriages; in 1906 it was one to twelve, while in 1920 the rate had increased so that fully 10 per cent of all marriages ended in the divorce court. Stating the proposition in a different manner, there were seven times as many divorces in this country in 1920 as in 1867. Allowing for our increase in population, the gain in divorce is 319 per cent.

It occurred to me that it might prove interesting to study this question from a scientific rather than from an opinionated viewpoint and to make statistics alone outline the issue. Hence, I shall take no high, unwavering moral tone, preaching at the outset an emphatic social ostracism for each and every case of divorce.

[1] By George L. Koehn, Department of History, Reed College, Portland, Oregon. Current History Magazine, New York Times. 16: 294-9. May, 1922.

Rather I prefer to present no thesis upon which to base this discussion.

Often one hears that the war is one cause for this modern phenomenon. But, then, the mentally sluggish are prone to blame everything that needs explaining on the war. *"C'est la guerre"* is still the great cry; and the war is such a colossal infamy that it is very hard intellectually to struggle from beneath the weight of its far-reaching psychological after-effects to determine whether the blame for this, that and the other thing is legitimately placed or not. It would be very interesting if we could determine what percentage of the increased divorce rate since the 1916 census was directly attributable to the dissolution of "war-bride marriages," to divorces between couples of foreign birth (such as American and French unions), or to divorces of couples one of whom was disabled. Unfortunately, no such data are available, so our conclusions must be left in the realm of conjecture.

Another cause referred to as disintegrating to the permanent union of two people is the childless marriage. The argument generally advanced is that two people, both of whom love their children dearly, find it easier to compromise and condone regarding irritants in their intimate life than do the childless. Children lend stability; if there are no children there is less forgiveness and more individual willfulness, and finally divorce.

Reports are as follows: In 1916, of all the divorces reported in the United States, 37 per cent reported children, 52 per cent reported no children, 10 per cent did not report as to children, which is assumed to be equivalent to a report of no children. This means 62 per cent reported no children, or over three-fifths of the divorces are from childless marriages. Of course, one may ask whether it is a matter of any grave concern whether two people with only themselves involved stay married or become divorced. And although, in the main, the divorces where families of children are left homeless are those

meriting the closest investigation, yet there is surely no certainty that, in a large number of the childless marriages dissolved, the men and women are any happier than before.

Economic Causes

The economic independence of an increasing number of women doubtless is a cause helping to swell the growing divorce rate. I once knew a professor of the old school who was fond of incorporating into one of his lectures upon economics a group of rather unsavory statistics to show that white women in America and abroad are on record for marrying men of every known color, race, age and condition of servitude, while there was not a case on record of a normal white man having married a full-blooded negress; in other words, a woman would debase herself to any extent for a home.

I think we can safely say such a condition of society exists no longer. In the first place, in 1916 approximately seventy thousand divorces were granted to women against thirty thousand to men; that is, more women sue for divorces than men. There may also be a clue in the percentages relating to causes of divorce. Next to "drunkenness" at 4 per cent, "neglect to provide" at 6 per cent has the lowest rate, and "cruelty" ranks highest at 33 per cent. Apparently the modern woman knows how to supplement meagre pocket money. She teaches school; she does office work, &c.; she pays for her own clothes and the home in an apartment house. As related to our discussion, these figures may indicate that economic dependence is no longer forcing women into marriage, nor is it keeping them there. Further can the case be substantiated by the records regarding alimony. In 1916, of all divorces granted, 79 per cent asked no alimony, 15 per cent asked and received alimony and 4 per cent were refused alimony. In divorces where women only sued for the divorce about fourteen thousand were granted alimony, four thousand were refused

and fifty-four thousand did not ask alimony. This seems to prove conclusively that the monetary consideration is a matter of indifference to the American woman either in maintaining or dissolving marriage.

Much may be said regarding the growing lack of religious orthodoxy in all classes of society and the bearing it has on increased divorce rates. Individuals not affiliated with any church, and who only attend church to hear the music on Easter, or, of necessity, to be married, naturally are not likely to regard the marriage vows as eternally and sacredly binding or marriage as a sacramental bond. In the 1920 census the population of Portland, Ore., is given as 258,888, of which number 100,346, or 36 per cent, are unclaimed by any church; and I suppose this example may be cited as fairly typical the country over.

Consider the old Puritan attitude toward marriage in contrast to that of our modern agnostic or "free thinker." The average man of today is a cheerful heretic and hedonist. Individual happiness, or, more superficially, sensuous pleasure, is his aim in life. To the Puritan, duty was the lodestar of existence. Duty was paramount; duty to God and to family. Happiness was a secondary and a not always accompanying attribute. God's word was law. Natural man is ever looking for variety; a life of sheer impulse would be the easiest sort to lead. A Puritan, an orthodox Christian, believes in stabilizing the *first* impulse, as it were; not in being a prey to each passing desire. The implication from the comparison is obvious, I think.

Influences at Work

The final and least definite influences bearing upon divorce which I wish to discuss are those diverse agencies which influence public thought; contemporary literature and drama, the vaudeville stage, the clerical pamphleteer. Personally, I feel not at all sure whether the consistent flippancy of these sources of public stimulation regarding marriage is a cause or an effect of

existing conditions. I am inclined to think it a little of both and to liken the situation to the logician's vicious circle.

Undoubtedly, much current fiction bearing upon the subject was written with the earnest desire of the ultra-realists to paint life as it is (the more sordid, the better for the novelist's purpose). Much satire is evolved through the musical comedy, the cartoon, and even the humble joke, merely in an attempt to sense the spirit of the hour and to catch the public ear.

Unfortunately, however, there are certain parrot-like individuals who accept, absorb and objectify into action any abstract idea presented for their consideration. Moreover, their microscopic minds being incapable of a telescopic view, they are impervious to the thesis of a book as a unit; instead, they pick out any morsel of thought that arrests their attention, isolate it from its proper environment and proceed to generalize largely thereupon. Hence, statements like the following, gathered at random from current fiction, undoubtedly influence this type of individual most unhealthily:

1. What a ghastly prison-house marriage is—a thing as hostile to the free human spirit as an iron ball and chain!
2. Marriage induces dry rot of the soul.
3. Marriage is like a revolving squirrel cage.

DIVORCES AND MARRIAGES

This table shows the ratio of divorces to marriages in forty-seven states and the District of Columbia:

	State	Divorces	Marriages
1	Nevada	1	1.54
2	Oregon	1	2.52
3	Washington	1	4.01
4	Idaho	1	4.81
5	Wyoming	1	5.34
6	Oklahoma	1	5.40
7	Montana	1	5.46
8	California	1	5.54
9	Arizona	1	5.92
10	Indiana	1	5.94
11	Texas	1	6.36

	State	Divorces	Marriages
12	Missouri	1	6.36
13	New Hampshire	1	6.40
14	Arkansas	1	6.56
15	Iowa	1	6.90
16	Ohio	1	6.91
17	Kansas	1	6.93
18	Illinois	1	7.26
19	Michigan	1	7.52
20	Utah	1	7.61
21	Nebraska	1	7.63
22	Kentucky	1	7.77
23	Colorado	1	8.63
24	New Mexico	1	8.66
25	Florida	1	8.73
26	Rhode Island	1	9.14
27	Maine	1	9.36
28	South Dakota	1	9.54
29	Tennessee	1	9.62
30	Delaware	1	9.70
31	North Dakota	1	10.24
32	Wisconsin	1	10.65
33	Alabama	1	11.13
34	Virginia	1	11.30
35	Minnesota	1	11.65
36	Vermont	1	12.59
37	Mississippi	1	12.63
38	Louisiana	1	13.43
39	Pennsylvania	1	14.46
40	Massachusetts	1	14.71
41	Connecticut	1	15.67
42	West Virginia	1	20.32
43	Maryland	1	20.35
44	Georgia	1	23.05
45	New Jersey	1	26.66
46	New York	1	29.81
47	North Carolina	1	31.94
48	District of Columbia	1	91.34

Bedroom farces and musical comedies similar to one listed under the title "Tangerine" (the scene of which is a prison, the principal characters three men held for failure to pay alimony) play to enormous houses every night. The stage and the "movie" constantly impress us with the fact that among certain classes of society it is considered naive and vulgar for husband and wife to consort together exclusively. Because they are constantly making light of marriage and free with divorce,

they have long since robbed audiences of their capacity to be shocked at the mockery of marriage.

On the other hand, the medium that I have chosen to call the clerical pamphleteer has generally proved a negative rather than constructive influence. Often he has been unconsciously flippant in merely a natural and human desire to be a bit original and striking. "How to Be Happy Though Married" is not the most fortunate subject imaginable in a serious discussion of the ills of divorce for the benefit of serious-minded people. One well-meaning divine assured the world, through a highly mystic and nebulous dissertation upon divorce, that marriage as a fact existed before birth and continues after death—an assertion which does not throw a particularly illuminating light on any specific problem of divorce. The sort of moralizing found in such pamphlets as the recent one entitled "Against Divorce" seems to me to be as thoroughly pernicious as the scintillating, hard flippancy of much of our current fiction and contemporary drama.

The question whether divorce is a social evil and a menace can be answered not by ranting about the destruction of corrupt civilizations because of broken marriage vows, but by investigating what becomes of the children of divorced parents. Every one will agree that the family is the basis of society. Suppose the children of divorced parents were found to grow up as healthily, as happily and as well educated as those from united, peaceful homes. Suppose that the economic failures, the delinquents, the criminals, were found to come not preponderantly from divorced parents, but from cases of desertion, or from ministers' families, for instance, or from the unwholesome, poverty-stricken home where there are too many children with too little bread. Then divorce might perhaps be termed merely a harmless social phenomenon attendant upon a complex and advanced civilization. It is with the statistics relative thereto that I rest my case.

Divorces by Years

Bishop Moreland of Sacramento gives the following figures relative to the number of divorces in the United States and the number of persons affected:

Year	Divorces	Year	Divorces
1901	61,698	1911	94,622
1902	62,109	1912	100,927
1903	65,263	1913	106,055
1904	67,086	1914	110,759
1905	68,901	1915	115,879
1906	72,786	1916	114,036
1907	77,636	1917	120,243
1908	81,579	1918	124,928
1909	85,199	1919	129,496
1910	91,638	1920 (est.)	132,753
Last decade	733,895	Pres. decade	1,149,696

Total divorces, 20 years	1,883,591
Divorced persons	3,767,182
Minor children named in decrees	1,318,514
Adult children affected	500,000
"Damaged goods" in 20 years	5,585,696

Net Divorce Rates

	State	Net Rate		State	Net Rate
1	Nevada	652	25	Nebraska	144
2	Montana	413	26	Kentucky	140
3	Arizona	358	27	Connecticut	130
4	Oregon	277	28	Tennessee	128
5	Washington	239	29	Colorado	128
6	California	230	30	Louisiana	115
7	New Hampshire	227	31	Delaware	114
8	Indiana	223	32	Minnesota	112
9	Texas	221	33	Maine	108
10	Michigan	221	34	Mississippi	105
11	Arkansas	220	35	Massachusetts	101
12	Missouri	202	36	Alabama	101
13	Idaho	196	37	So. Dakota	95
14	New Mexico	191	38	Virginia	92
15	Wyoming	186	39	Wisconsin	89
16	Illinois	183	40	Maryland	87
17	Ohio	176	41	No. Dakota	75
18	Rhode Island	176	42	Pennsylvania	74
19	Oklahoma	170	43	West Virginia	69
20	Iowa	168	44	Georgia	54
21	Florida	163	45	New Jersey	54
22	Utah	158	46	New York	44
23	Kansas	155	47	No. Carolina	30
24	Vermont	153	48	Dist. of Columbia	15

An investigation of some of the leading state-aided institutions of Oregon having charge of delinquent, wayward or homeless children results in the table accompanying showing the marked effect of divorce on our so-called boy and girl problem.

DIVORCES AND HOMELESS CHILDREN

Name of Institution	Per Cent of Charges Coming From Divorced Parents
Boys' and Girls' Aid Society of Oregon.....	15.6
Florence Crittenden Refuge Home	18.0
House of the Good Shepherd	31.2
Salvation Army Rescue and Maternity Home....	33.0
The Christie Home for Orphan Girls.....	35.0
Pacific Coast Rescue and Protective Society.....	35.8
Oregon State Industrial School for Girls.....	59.3

The record of the Portland (Oregon) Court of Domestic Relations (Juvenile Court) is also significant. Of all the boys and girls coming before that court in the first eight months of 1921, two hundred and fifty-four cases, or about 30 per cent, came from divorced parents. (If the cases where the parents are not living together were also considered, the rate would be nearly 80 per cent.)

The record of these institutions, indicating as it does the large percentage of juvenile disorder due to broken homes, cannot be considered as extraordinary, for it is fairly representative of conditions in the rest of the country. And though these statistics are incomplete, they may at least serve one purpose—that of indicating that the facts of divorce and its attendant evils are not so simply disposed of as a cursory thought might indicate.

One paradox of modern society is the fact that the most excessive divorce rate in the world is in America, a country most advanced in culture, prosperity and intellectual liberality, all considered desirable attributes. America leads all the nations, with a rate of one hundred and twelve in every one hundred thousand quoted in the

1916 census. Bishop Moreland of Sacramento claims one hundred and forty-one for the present time. Nevada stands first in the list of comparative divorce rates for the state, here rate being six hundred and fifty-two. Five other western states—Montana, Arizona, Oregon, Washington and California—follow with the highest divorce rates.

In 1916 there were five counties in the United States in which the number of divorces exceeded the number of marriages. In 1921 four counties in Oregon alone laid claim to more divorces than marriages. In Clackamas County, for example, with an exception of 1917, the divorces have outnumbered the marriages for the last five years. In 1919 there were two hundred and fifty-one marriages in that county, with three hundred and sixty-six divorces. In 1920 there were two hundred and seventy-six marriages and four hundred and five divorces. In Clatsop County, in 1919, two hundred and seventeen marriages are recorded and three hundred divorces. In 1920, two hundred and twenty-six marriages and three hundred and twenty-two divorces, or three divorces to every two marriages. In Columbia County, in 1920, seventy-five marriages occurred and one hundred and twenty-eight divorces, or a rate of nearly two to one in favor of divorces.

In the large urban centers the divorce rates are high, though the divorces do not exceed the number of marriages. In three of the leading Pacific coast cities the divorce rate varies from one to five in Los Angeles to one to two in Seattle and Portland. A steady increase in the divorce rate is noted. The biennial report of the Secretary of State for Oregon (1917-1918) quoted 3,579 divorce suits filed, while the next report (1919-1920) from the same office quoted 7,607, or nearly double the number of the preceding report. These figures are but typical of existing conditions in a large number of our states today.

Japan has an annual rate of one hundred and nine,

likewise exceedingly high. In striking contrast are the statistics from such countries as Norway and Finland, where in 1904 the rate was eight and five, respectively, per one hundred thousand. (I might mention that in 1900, in the United States, the rate was seventy-three, in 1906, eighty-four, and in 1920, one hundred and forty-one per one hundred thousand.

In England and France, where religious sentiment runs high against divorce and the Church does not sanction remarriage, the rate is also very low. In England only about two per one hundred thousand in 1904 secured absolute divorce; in France, twenty-eight. Germany, too, had the comparatively low rate of eighteen; in 1905 it was nineteen. The "hausfrau," little more than a domestic drudge, had no voice in the economic, social or intimate affairs in her own home. Hence, she worried along somehow, unhappy possibly, but likewise undivorced. Such a condition of society is not ideal, and in sharp contrast the situation in America again stands forth. There is the American woman with the vote, with easily acquired economic freedom, with intellectual enlightenment and advanced ideas of democracy and sex equality—a desirable picture—and yet the divorce rate is higher here than in any other place in the world; and, roughly estimated 37 per cent more women than men sue for divorce. Well may one hesitate and ponder before issuing a too superficial and hasty judgment upon this so-called modern menace.

Divorce in Japan

If I should attempt to moralize at all, it would be with the example of Japan before me. She has an exceedingly high rate of divorce now—previously it was even higher. In 1897 the rate per one hundred thousand was two hundred and twenty-seven. In 1903 there were one hundred and forty to every one hundred thousand. The latest statistics give one hundred and nine. The new code in Japan, introduced in 1898, has tended

to reduce somewhat the frequency of divorce, but even now there is one divorce to every six marriages.

There are ten distinct grounds for divorce in Japan; moreover, the courts give legal recognition to the old Japanese custom of divorce by mutual consent, and the statistics on that line are appalling. During the six-year period from 1899-1905, the records show that the courts granted 1,430 divorces, while 445,890 divorces by mutual consent were recognized during the same period. Furthermore, 11.2 per cent of the marriages are dissolved after a period of from six to twelve months, 18 per cent from one to two years, 12.8 per cent from two to three years. Seemingly, the largest number of marriages were scarcely given a fair trial. To me such legislation as the foregoing seems very wrong. G. K. Chesterton, in his paradoxical style, remarks that divorce is not separation, but remarriage. I believe that if it were impossible to remarry for two or three years after a divorce was obtained, many thousands of needless divorces would be prevented.

Likewise one readily sees the overwhelming results when a marriage can be dissolved by mutual consent (incompatibility is what we call it in America). In Japan during six years there were 444,460 *more* divorces from mutual consent than those from the ten other distinct grounds for divorce combined. The ambigious term incompatibility is elastic enough to stretch to any lengths the plaintiff desires, and to cover likewise those innumerable cases wherein both agree to disagree and then amicably decide to employ "incompatibility" as convenient grounds. Fewer causes permissible for divorce would undoubtedly lessen thoughtless marriages and prevent needless divorces. The modern tendency experimentally to try marriage on like an attractive coat, just to see if it fits, would be effectively inhibited.

DIVORCE LAWS OF AMERICA AND EUROPE[1]

World Divorce on Increase

We are at last fully convinced that laws, no matter how strict, will not produce happy marriages any more than they will force people to remain married when they wish to be unmarried, or will prevent them from venturing upon another matrimonial experiment with hopes of more success. Whether one believes it spells the greater sinfulness of our present generation or a finer, higher sense of what the right kind of marriage can and should be, there is no evading the plain fact that all over the world divorce is on the increase. It is an illusion to suppose it to be our own peculiar American vice, growing out of our unsteady, volatile temperament and encouraged by easy access to Reno. In countries where divorce is almost impossible to secure, men and women still find ways of circumventing the law and of ridding themselves of their chains. In such countries divorce is on the increase. In countries where the divorce laws are most liberal and freedom may be had for the asking, there, too, the number of divorces mounts up to larger and larger figures. In England, where the old law, slightly modified, still obtains, there are more and more divorces every year. In France, where they have held to the idea of making it very difficult to marry and very easy to unmarry, divorce is greatly on the increase. In the Scandinavian countries, where the very latest form of divorce law is being tried, society stands aghast, not so much at the increase in the number of those seeking and obtaining separation as at the number of eminent and respectable citizens who are finding solace in remarriage. In the United States the ratio is one divorce to every eight marriages;

[1] From article by Nancy M. Schoonmaker, lecturer and publicist on social questions. Current History Magazine, New York Times. 20: 249-53. May, 1924.

in France, where divorce is said to be "neat, quick and secret," the quoted price being something less than $1,000, the ratio is one to five, the number rising in one year (1918-1919) from 7,851 to 11,514. In England the number rose from 2,222 in 1918 to 7,044 in 1921; in Germany, from 13,344 in 1918 to 36,542 in 1920; in Switzerland, from 1,699 in 1918 to 2,241 in 1920; in Sweden, from 1,098 in 1918 to 1,455 in 1922. Norway alone has the distinction of showing a decrease, from 594 in 1918 to 587 in 1922.

It would seem, therefore, that laws, be they strict or liberal, have very little influence on the ultimate result. Why agitate, then, for a uniform, better divorce law for the United States? Why not continue as we are, speaking our forty-eight different divorce tongues in our forty-eight states? If divorce is bound to increase whatever we do, what is to be gained by uniformity?

Chiefly because there is, after all, a certain moral effect upon the individual in observing the law. If we find it impossible to live up to the laws that restrict us, perhaps we would do well to examine not only our own hearts, but also the law itself. If it is found that the statutes as they exist at present foster not a higher but a lower standard of behavior; if instead of preserving marriage in its beauty and purity they rather put a premium upon immorality, making it the price of the desired freedom, then certainly the law needs modifying. If we insist upon divorce, no matter how our preachers and teachers rail at us, then certainly the more decently the divorce can be obtained the better for the individuals directly concerned and for the body social as well.

Slow Progress in Great Britain

Last year Great Britain, after more than fifty years of loyalty to her old divorce law, which dates back to 1827 and which recognized only the one biblical cause for divorce (admitting also ill-treatment and desertion

if the woman is seeking the decree), finally made the terms identical for men and women. It is no longer obligatory for the husband to beat and desert as well as betray his wife. He has only to sin against the marriage bond. And that, in England, is thought to be a long step. It is not to be supposed, however, that English men and women have been any more honest or willingly indecent than we have in furnishing evidence that would satisfy the court. Not long ago all London was discussing the case of a couple prominent both socially and politically who obtained a divorce on evidence furnished by the husband in collusion with one of his own relatives. The husband subsequently published a letter in one of the leading newspapers, describing the whole stratagem. London read and laughed and a few more people were converted to the idea of a more liberal divorce law.

It has not come easy to England, however, thus to circumvent the law. English tradition and psychology are all for obeying it. In England they look with scandalized horror upon our easy American indifference to law-breaking. So when England found that the old divorce law was beginning to pinch, and, worse than that, was encouraging lawlessness, it took steps to liberalize it. But those steps have been long and slow of accomplishment. The man in the street does not remember just how long ago the Royal Divorce Commission began its labors, but it was long enough, at least, to have produced several great tomes of findings, which the British Museum lays out before you with a good deal of conscious pride. Not many countries have done the thing as thoroughly as that. But progress was mostly confined to reporting, for the leisurely labors of the Royal Commissions are not unlike those of like bodies in our own republican land. They are only the beginning. Lords and Commons must accept or reject. And the majority report of the Royal Commission on Divorce has been used as a football back and forth

between the two houses till the people almost gave up hope.

Year after year, however, more and more people of more and more classes went on demanding that something be done. An illustration is an incident in the Woman's Cooperative Guild. As a branch of the great central organization, the English Cooperative Movement, the Woman's Guild habitually received from the parent body a yearly stipend for use in its work. When the popular agitation for divorce reform began, the Woman's Guild joined in the movement. The general cooperative looked with disfavor upon such action and let its displeasure be known, hinting at a withdrawal of the yearly stipend. Immediately the Woman's Guild accepted the challenge, gave up the money and went on backing divorce reform. It is worth noting that the main body, after holding off for a year or two, thought better of its decision and continued the appropriation to the women's branch.

The English divorce law that finally came to a vote in Parliament was by no means as liberal as the Royal Commission had recommended. It undertook to make the terms identical for men and women, and even that was won only after a hard battle. The opposition expressed its fear that decent England would "degenerate into the condition of America, where the state of affairs is merely camouflaged polygamy and polyandry." But with the support of so high a dignitary as the Archbishop of Canterbury, the bill was finally passed.

Another aid to would-be divorces in England has been what is called the Poor Persons' Act. The cost of divorce in England has done almost more than the law in preventing the decrees. Among the lower classes there was growing up the practice of boldly walking out of marriage and, law or no law, as boldly walking into an unblessed union. So England hit upon her system of state aid. By the provisions of this act, provided you

do not mind putting yourself in the poor class, divorce can be had at bargain rates. The figures show the results. In 1913 there were 1,267 divorces granted in England; in 1919, 5,763, of which 2,341 came under the Poor Persons' Act.

In sharp contrast to the hesitating policy which England has followed are the reforms which the Scandinavian countries have swiftly and resolutely put through. There, too, especially in Sweden, the marriage law was, a generation ago, so archaic in form and spirit, based upon so mean an opinion of women, that no self-respecting woman could enter upon matrimony without feeling herself something less than slave and chattel. There are whispers of more than one high-minded pair who preferred a common law marriage to such legal bondage.

Scandinavian Countries Most Liberal

Finally convinced of the need of change, the Scandinavian countries embarked upon a plan of unifying their social legislation, and in 1910 set up a Scandinavian Commission for Social Legislation. The members were eminent jurists, each of the three countries including in its delegation one woman, Fröken Elise Sem from Norway, Fru Emilie Broomé from Sweden and Fru Estrid Hein from Denmark. Like the Royal Commission of England, this body made a profound study of the whole matter of social legislation. Its final report was not made until 1918, but certain sections of the report had been given out earlier, and already in 1915 Sweden was enacting into law the marriage and divorce recommendations of the commission. Norway took the same step in 1918, and Denmark, waiting to act upon the completed report, gave its ratification in 1922.

The grounds for divorce which these laws provide are the most liberal possible. The old theory that divorce could be secured only by reason of crime gives place to the more enlightened one that the best

and most fundamental reason for granting a divorce is, after all, that the two people chiefly concerned both desire it. The simple desire, simply stated—mutual consent—that, it is held, is all the court or the state has a right to ask or to know. The two people seeking the decree will appear before the proper authorities and make their request. They will then depart and, for a period of one year, will live separated, that one remaining in the home who has been the less culpable or whose absence would mean the greater loss to the children. At the end of the year, if there has been no change of heart and the divorce is still desired, the two people will again appear before the authorities and repeat their request, and the decree will be issued.

There are also provisions for those situations in which only one of the two parties desires a divorce. Here, too, the Scandinavian law is based on the belief that the marital relation is moral only when love is the binding tie. The law recognizes as grounds for divorce, when petitioned for by only one of the spouses (in this section of the law there is slight variation in the three countries), flagrant neglect, misuse of intoxicants, a vicious life, willful desertion after three years, bigamy, exposing to venereal disease and incurable insanity.

Liberal as the provisions of the Scandinavian law appear, it is even more liberal and farsighted in respect to other provisions whose fulfilment is vital to the nation's well-being. Under these further provisions the law seeks to secure also the largest possible good for the children of such unhappy unions. It instructs the court to arrange for their care, guided by what is considered best for them. If the parents have agreed between themselves as to what shall be done with the children, the court abides by this decision unless the child's welfare is endangered. Both parents must contribute to their support, guardianship going to the parent to whom they are awarded. Thus the Scandinavian law "extends a greater protection to the weaker members of

the family, the wife and the children, and has, by its direct and implied emphasis on the spiritual significance of marriage, earned a high place in the annals of modern family legislation. It would preserve the dignity of marriage by putting an end to unions which are a disgrace to its name." Since the new law has been passed, 80 per cent of the divorces have been secured by mutual consent.

In those new countries which have been set up since the war, that long chain of little new republics, Latvia, Lithuania, Czechoslovakia, Yugoslavia, which cut their way across old monarchistic territory, the definite principle seems to have been adopted of putting difficulties in the way of marriage and allowing divorce to be had for the asking. Hard to get in, easy to get out of matrimony, is the rule they propose to try. This has, for a long time, been the policy of France, where it is no unheard-of thing for a marriage to be abandoned because it has been impossible to procure either the death certificate or the written consent of some distant relative. But the French statistics of bigamy and divorce, mounting higher every year, hardly give ground for hoping that these new republics have found the ultimate solution of the divorce problem. Undoubtedly, however, their action gives added proof that this is the general tendency of the world.

In Germany, Austria and Bolshevist Russia the new social legislation points to the same more liberal view of divorce as something which primarily concerns the two people involved. Mutual consent is recognized as the most logical ground, but careful provision again is made against an irresponsible attitude toward children or wife. And there can be little doubt that the women of these countries who bore the heaviest brunt of the old marriage laws have benefited vastly by the new regulations. There is also little doubt that in these countries, as in every other, under these laws as under every other, divorce will continue to increase. That granted, it is easy to

accept the philosophical conclusions of a prominent Scandinavian that, "since we must have divorces, let us secure them decently and with the least possible fraud and injury both to those directly involved, the family in which the event takes place, and to the larger family, society."

NEW YORK LAW ON MARRIAGE AND DIVORCE[1]

That mediaeval concepts of the character and incidents of the marriage relation do not and cannot effectively prevail in our civilization is the first deduction from a reflection upon the figures in this report.[2] A well-known jurist is quoted as saying facetiously and epigrammatically, but truthfully: "It is the end of the road which was opened when the harem door was set ajar." In other words, it is the evidence of a social evolution. No matter what opinion is entertained of the proper basis and limitations of marriage and divorce, and whether the laws are dominated by ecclesiastical, dogmatic, legalistic, eugenic, economic, or individualistic considerations, the fact is demonstrated that the number of dissatisfied spouses seeking and securing judicial relief under existing laws is increasing disproportionately to the increase of population and disproportionately to the increase of marriages. Nor is this increase confined to those states whose laws have liberalized and extended the causes for judicial relief. On the contrary, a study of the figures unquestionably shows migration (probably *animo revertendi*) from the illiberal states to the liberal states for judicial relief under the liberal laws; and it also shows a disproportionate increase in serious offenses alleged in those states where illiberality is the charac-

[1] By Charles A. Boston, chairman of the Committee on Law Reform of the New York State Bar Association. Bench and Bar. 43: 20-31. January, 1920.

[2] Report of the Federal Bureau of Census.

teristic of the law; indicating that an illiberal law is at least colorably provocative of the offenses for which it gives judicial relief. For illustration, where adultery is the sole ground for divorce, the increase of divorces is accounted for by an increase in adultery; while in those states where other causes justify a divorce adultery becomes relatively insignificant as the assigned cause. Such liberality then, at least has the merit of diminishing the pruriency of the man hunt or the woman hunt conducted under the judicial auspices.

But the indications also undoubtedly point the conclusion that those states whose policy is most liberal afford relief, not alone to their own citizens, but very largely to the citizens of other states; this indication is afforded by the indications of the number of migrations, probably for the purposes of divorce, the number of processes of publication, the number of absentee defendants, and the number of undefended causes. Nevada, though proportionately the greatest divorce mart, is not the place of greatest martial immorality; its divorces for adultery are proportionately less than New York's—eight out of six hundred and thirteen in Nevada; two thousand seven hundred and fifty eight in New York for the single cause. Measured by causes in other states, New York divorces for adultery are disproportionately large, the average of all divorces in the country for adultery being 11.5 per cent; or to put it another way, by denying divorce for all causes but one, New York holds within the bonds of matrimony many of its citizens who could secure a divorce elsewhere; and yet the number of divorces for adultery in New York exceeds the normal rate elsewhere The average rate of divorce for adultery per one hundred thousand in the entire country is about 13.3, in New York about 27.5, practically double. In short, New York, by adhering to the strict views of her ecclesiastics as to the sole proper cause of divorce, drives some of her citizens elsewhere for the judicial relief of divorce, denies

such relief to those who suffer the same indignities but who do not migrate, and encourages adultery as a basis of relief from what, judged from the standpoint of individualism, are intolerable conditions; though the New York law recognizes no condition as intolerable to matrimony, except outside sexual immorality.

Although New York, with its heterogeneous population, gathered from the ends of the earth, as well as a small proportion of hereditary native stock, has pertinaciously adhered to her strict divorce policy while every other state in the Union except South Carolina has liberalized its own policy, it must be concluded that New York has not a monopoly of reason in the solution of the problem, and that it is some other influence than the superior mentality or the superior morality of New York's people that dictates its policy.

The problem is world wide. Japan, Russia, Denmark, have each offered their own solutions in recent times. Japan, on the recommendation of her statesmen, predicated upon a careful study of existing institutions, past history and comparative jurisprudence, has declared for consensual divorce, with liberal judicial relief in the absence of consent. The recent publication of Mohammedan law, in English (Maliki Law, by F. H. Ruxton, 1916) indicates the solution according to primitive custom which bore then and continues to bear most harshly against the wife.

The recent Russian theory of the obligation of women to the state, as wives and mothers, finds a closer analogy than we would be inclined to admit in the theory of New York law that a woman once a wife must always be a wife, regardless of brutality, criminality, acquired imbecility, or defiance of every marital obligation save sexual fidelity, and that this is because of the interest of the state in the continuity of the marital bond.

The Ministry of Denmark has, it is said, seriously studied the subject of marriage and divorce, with the aid of expert assistance from other Scandinavian coun-

tries, with the result that at least two valuable reports have been printed and circulated and a new and liberal law has been introduced as a ministerial measure. It is worthy of note that it is said that this measure provides that divorce shall always follow separation within a certain time; and if both spouses are willing, within one year.

A problem which is of such world-wide importance, which will not destroy itself, which shows itself under such diverse conditions, which is intermingled with the question of state interests, individual interests, economic forces, heredity, environment, eugenics, habit, emotion, diversity of racial attitude, ought not, in a liberal civilized community to be dismissed with a solution which is inherited from past ages of ecclesiastical control or influence without the most careful consideration of the fundamentals. It demands a new consideration in which the proper functions of law should receive their proper treatment; and the proper functions of law are that it should avail one aggrieved to correct or compensate for the grievance and that it should be adapted to that end. Adultery is not the sole serious grievance possible within wedlock inconsistent with its proper legal continuance.

Among the grossest absurdities of our present law, from the standpoint of the purposes of marriage in its relation to a non-ecclesiastical state, are:

The continuation of the bonds of matrimony though the spouses are judicially separated for causes which make dwelling together intolerable.

The continuation in wedlock of spouses each of whom accuses the other of adultery, without adequate proof of the fact to satisfy the requirements of the law of evidence, with its denial of the competency of the testimony of the respective complaining spouses though they might be eye-witnesses of the offence.

The continuation in wedlock of spouses both proved to be guilty of adultery.

It would seem that if there is one kind of marriage that a state, as distinguished from a church, is not interested in perpetuating it is one in which both of the

spouses ignore what the state regards as the one essential to marital integrity. Continuance of the married state as a penalty for adulterous spouses is a *reductio ad absurdum* in the realm of topsy-turveydom.

It is almost equally absurd for the state to perpetuate a condition of wedlock, where each of the spouses suspects the other of adultery to the point of judicial complaint, and perhaps with actual personal knowledge on the part of the one of the other's offense, but with the barrier of exclusion from evidence of the personal knowledge, although the complaining spouse is actually an eye-witness.

Such is the absurdity of our present law. The device of a judicial separation (divorce *a mensa et thoro*), with its curious legal incidents of obligation without right, and right without obligation, is a device of human reason in the face of ecclesiastical dogma. It satisfies the conscience of those who accept the extreme ecclesiastical view and as such is a useful device. But human instinct, not to say reason, recognizes conditions in which it is unsafe for the spouses to sustain the relation of the married state.

Our administration of the law produces curious and unjust results, of which the most notorious are:

The recognition of foreign marriages of divorced persons prohibited to marry by the decree of their divorce.

The imprisonment for contempt of court of husbands unable to comply with court orders for alimony.

In the one case the courts confess their inability to enforce their decrees against the defiance of those able to comply; in the other, they preserve their majesty against those who are too feeble to obey.

We should remember that, whatever the logical results of harsh and unbending law, and the supposed analogies, which seem to call for the adoption or application in judicial administration of the laws, of principles originating in other purposes,—both our laws and our administration of justice are popularly judged by their

results; and these results cannot but provoke impatience from whatever standpoint viewed. For example:

Our laws deny what other laws secure.

Our laws can be defied by the device of a foreign marriage, even in an adjoining state and between two of our own citizens.

Our citizens of sufficient means, after a short sojourn, get judicial relief in other states which at least has the appearance of validity.

They return here to marry and beget new families, who are always subject to the legal results of a subsequent attack on the validity of the foreign divorce.

The legal complications that may result from a successful attack upon the validity of such a foreign divorce transcend the imagination. They have already resulted in indictments for bigamy; in further divorces, in which the remarriage, after a foreign divorce supports a charge of adultery; in rearrangements whereby the second marriage is annulled or disregarded and the old marriage is revived.

Logical consistency in the dominant idea ruthlessly disregards the wrong done to innocent children treated as bastards; to innocent men and women, innocently married under apparent legal right, with no knowledge of the intricacies of legal logic, and then declared to be disgraced wilful participants in adulterous intercourse and parents of bastards, with all of the legal consequences which such unjust determinations involve.

If a malevolent devil were to vent his ingenuity upon the discovery of a legal system calculated to promote the unhappiness and disgrace of innocent people, it is doubtful whether he could accomplish more to that end than by adopting the New York divorce laws ready to his use with their judicial incidents and their ordinary methods of administration. It is perhaps a sufficient argument against the policy of the New York law to point to its results in experience without denouncing it as a relic of barbarism, affording less relief and leading to more complications than no law at all, as is the case in South Carolina.

Those theories which find their origin in the reputed teachings of the founder of Christianity are beside the question; which is not as to the attitude of any church

toward its own membership or its right to operate upon their conscience, but as to the practical effect of secular law upon the status and rights of those who do not conform with the tenets of their churches, as demonstrated in experience.

Our present divorce law is a thing of tatters and false analogies, oscillating curiously between public interest and private right, full of inconsistencies, a fit subject for intelligent scorn; a mongrel of ecclesiasticism and materialism; a mixture of status and contract; frequently tight where it ought to be loose, and loose where it ought to be tight; with a variegated history; harsh and ineffective; all unconscious of the progress of civilization and comparative jurisprudence, statistics, and results; and bent upon conformity with artificial and illogical standards.

The economy of human physiology substitutes habit for purposeful activity; and a similar mental habit substitutes a phrase as a convenient avoidance of thought. The phrase that conveniently excuses an adequate approach to the solution of the real problem in the law of marriage and divorce is "the divorce evil." And the trouble with such lazy phrases is that they postpone and discourage a proper approach to the real problem. There is, in fact, no "divorce evil;" there is a marriage evil for which the present laws are wholly inadequate; and while New York, ostrich like, contents itself with its antiquated and arbitrary divorce law with a single salacious cause, with all of the nastiness incident to a judicial investigation, the world at large and neighboring and other states are looking the problem in the face. Divorces are increasing everywhere, citizens of New York, too poor to establish temporary residences elsewhere, desert their spouses; those financially able to go to France, Nevada, South Dakota, Rhode Island, Connecticut, or New Jersey, according to their means and relative haste, secure the relief there granted, frequently under a false repre-

sentation of a change of residence, and then too often promptly return to New York, under the mistaken security of a divorce so obtained, to remarry, with a large chance that in judicial proceedings in New York, or under collateral attack, the alleged divorce may be declared invalid; the second marriage bigamous; and the children thereof illegitimate. Those who have the courage or indifference to commit the one necessary offense to secure a New York divorce, and who are after proof of their offense (which is also a felony, but never punished as such) solemnly penalized by a judicial decree forbidding the guilty to marry again, merely cross a state boundary, marry and return to the state, to live in lawful wedlock with the new spouse, and to have legitimate children here. If it were not the instrument of tragedy in many human lives worthy of happiness, it would be the greatest farce enacted in the name of the law.

The fault is not in divorce, it is in the marriage of those who are upon the test of experience found to be unfitted for the marriage relation under the conditions of modern life.

This is not a local problem. It is receiving widespread attention. In its various aspects, sometimes more or less grotesque it is true, it has invited the attention of modern lawmakers and sociologists in many places and countries. It has been the subject of study in Japan, Russia, Denmark and various parts of the United States; it has received special consideration from the Bureau of the Census and from the Russell Sage Foundation (Broken Homes, a Study of Family Desertion and its Social Treatment; American Marriage Laws in Their Social Aspects); it has invited many experiments in emotional effort, varying from speculative guesses at the operations of heredity to the dogmatism of ecclesiasticism. From the standpoint of the state it is not an ecclesiastical problem, but a social problem; from the

standpoint of society it is partly an individual matter, partly a group matter. The pursuit of happiness is a recognized principle of American institutions, and this pursuit can only be realized in individual lives. Law, therefore, should not lose sight of individual tranquility. An unhappy marriage is one of the greatest barriers to such tranquility; a happy marriage one of its greatest boons. Since marriage is well nigh universal there is no reason why the law enacted in the interest of all should not aim to promote happiness and put an end to what is demonstrably a continuing state of despair.

The idea of an available second marriage as a reason for facilitating the dissolution of an unhappy first one, or that withholding consent to a reasonable dissolution of the marriage, is an injury to the right of freedom, seems novel to occidental legislation, with its boastfulness of liberty but with its inheritance of views which Japan has discarded. The Japanese declaration is, however, in harmony with the principle of the pursuit of happiness; and its principle is unquestionably the motive of many migrations for divorce purposes, with which we are all so familiar in actual experience and to which we so firmly and nonsensically close our eyes when dealing with the subject legislatively or judicially.

It is almost a necessary concomitant of the liberal view of personal freedom recited in the Japanese law, that it authorizes a consensual divorce, as well as a judicial divorce; and for the latter it includes in the causes bigamy, adultery, sentence for an offense of grave nature, such cruel treatment or gross insult as make living together unbearable, and desertion with evil intent. In other words, whatever makes marriage a mockery is in the eyes of the Japanese legislator, a reason for dissolving it, either with the consent of the spouses or judicially.

While New York adheres to its ideal that only adultery is or should be a ground for severing the marriage tie, and there are numerous other causes in other states,

nevertheless there is a steadily increasing prevalence of divorce in New York as elsewhere. Whatever may be the cause of the increase elsewhere, there has been no relaxation of the law in New York to account for its increase.

The report of the Bureau of the Census in October, 1918, issued from the Government Printing Office during the current year, has directed public attention to the statistics of this subject. For the twenty years between 1867 and 1887, the number of divorces in the United States was scarcely one-third as great as for the next twenty years; and during this latter period of twenty years the number for the last decade was 68.4 per cent over the first decade. Ten years later, in 1916, the number of divorces increased 57.6 per cent over 1906, and in 1906 they increased 67.6 per cent over 1896, the normal increase of population during the former period being estimated at 21 per cent. In 1906, the New York divorces increased 62.9 per cent over 1896; in 1916, 59.9 per cent over 1906. New York, therefore, with its single cause keeps substantially abreast of the rest of the country with many causes. Twenty-four states (not including South Carolina, which has no judicial divorces) had a smaller proportion of increase than New York, although no other state has but one cause for divorce.

New York does not, by decreasing her causes for divorce to a single cause, diminish the relative number of divorces accordingly. If the diminution of causes were a deterrent, New York would rank next to South Carolina at the bottom of the scale; and, as a matter of fact, in 1916 only North Carolina had a lower rate per one hundred thousand of population, having thirty-one to New York's thirty-two while Nevada ran up to six hundred and seven. But this does not tell the whole truth, because the rate in New York increased as follows: In 1890, seventeen; 1900, twenty-three; 1906 twenty-five; and in 1916, thirty-two. Thus New York's

rate per one hundred thousand of population has nearly doubled in twenty-six years, although its single cause remains unchanged. (These statistics appear to include judicial separations; if these are not included the number per one hundred thousand is slightly less.) In 1890 New York had the lowest percentage except North Carolina; in 1900 New York and New Jersey were equal, with Delaware very much lower; in 1906 New York was higher than New Jersey and North Carolina. While New York was increasing from 1906 to 1916, Maine, North Dakota, South Dakota, District of Columbia, West Virginia, Alabama, Mississippi, and Colorado were decreasing; the District of Columbia more than 50 per cent and South Dakota 45 per cent; while Rhode Island increased 37 per cent, Connecticut 42 per cent, Nevada 241 per cent. The statistics are based upon divorce decrees, and do not show how many of the litigants in other states were citizens of New York who sought the haven of liberality or returned from it before the ink was dry. A little common knowledge should temper the interpretation of statistics. So measured, we know that South Dakota did not suddenly become a paradise for spouses, nor the people of Nevada all start to get divorces; we merely know that within the decade the divorce center for the relief of the citizens of other states shifted from Sioux Falls, South Dakota, to Reno, Nevada, that Newport became a haven and Connecticut a refuge, and that New York always contributed her quota to each of the recognized "divorce colonies." In the country at large, wives are becoming more critical or husbands less docile, because there has been a slow growth of the percentage of wives securing divorces. When, however, it is considered that this increase of percentage (3.1 per cent since the decade from 1887 to 1896) is measured upon an increase in the entire country from 42,435 divorces in 1896 to 112,036 in 1916, or an increase of 260 per cent, we will see that the increase of percentage of plaintiff wives indicates an actual increase of considerable numbers.

The causes reported in the census are adultery, cruelty, desertion, drunkenness, neglect to provide, combinations of these causes, and all other causes; of these for the whole United States 11.5 per cent were for adultery, 28.3 for cruelty, 36.8 per cent for desertion. If New York's divorces for adultery had held their own by proportion alone 11.5 per cent of all of the divorces in the United States would have been allotted to New York, 1,288 divorces instead of the actual number of 2,758, which number is thus about two and one-quarter times the normal proportion. Measured by this standard it appears that adultery is two and one-quarter times as frequent a cause of divorce in New York as it is elsewhere on the average throughout the United States, indicating probably that to some extent adultery, with its scandalous details, is actually sought as a relief to intolerable marital conditions, rather than that adultery is normally more frequent in New York than elsewhere, or that spouses are less complaisant in New York than elsewhere. If New York suffers as much from cruelty or desertion as other states—as she probably does—she would have had in 1916, 3,170 divorces for cruelty (four hundred and twenty-two more than she actually had for adultery) and 4,122 for desertion—a total (if the proportion were preserved) of 7,292 spouses who would be afforded release from the bonds of matrimony if citizens in some other state, who are denied it in New York unless they seek it elsewhere, as many of them doubtless do.

Assuming that the population of the United States is homogeneous in its marital habits, the men who are afforded release from unsatisfactory marital relations in other states outnumber those who secure such relief in New York at the rate of five to one, because only 20 per cent of the divorces granted to husbands are for adultery; whereas the wives afforded relief elsewhere for causes not recognized in New York outnumber those who could secure relief in New York by fourteen

to one, because only 7.5 per cent of the divorces granted to wives are for the adultery of their husbands. Indeed, outside of New York wives granted relief for cruelty outnumber those granted relief for adultery almost as five to one (33.2:7.5), and for desertion more than four to one (30.8:7.5). Elsewhere, this great overplus, condemned to the bonds of matrimony in New York would, according to the Japanese theory, have the hope of a second marriage and the freedom which is here denied them. Here, having once made the mistake of entering into the bond with an unfit spouse, however they may be actually relieved by the desertion, or legally assuaged by a separation for cruelty, they can never be restored to freedom or a new life, save by death, or through the road of adultery with its numerous restrictions.

The New York law fails to take into account excuse, palliation, temptation, frailty, or opportunity, but is as unyielding as Procrustes. It will grant no release from the bond for extreme cruelty, or for unending desertion; it will accept no excuse for adultery under the strongest provocation, although it refuses relief where there has been connivance, procurement, or condonation. It loses sight altogether of fitness for civilized, peaceable human existence; it will imprison a man for life for a crime deemed to unfit him for freedom in society, but it condemns his wife without a hearing to be the other half of an indivisible whole; it commits another to custody as an incompetent without the hope of restoration, and condemns his spouse to live without companionship. It punishes brutality, but it offers no substantial relief to the innocent mate. There is an entering wedge of mercy and progressive enlightenment in the provision of Section 6 of the Domestic Relations Law which enables the wife of a life convict to marry (Matter of Gargan vs. Sculley, 82 Misc. 667).

Viewed with the impartiality with which we can condemn the Hindoo custom of the suttee, or the Chinese

custom of crippling the feet of their women, we should contemplate with horror the injustice of our marriage laws, which allow a husband to recover from another for loss of his wife's services as though she were a slave or a domestic animal, but which fail to view the marriage state and its actual outcome from the standpoint of individual human life or from the basis of continuing fitness.

Let churches set such estimates upon their sacraments as they conceive them to demand; let them make such rules for their communicants as they will observe, or as within the communion by ecclesiastical penology can be enforced; but let the civil law view marriage as a civil status, entered into with consent, to be continued during actual fitness; after the cessation of fitness, let it be within the power of the parties by consent to dissolve the relation, or, if they do not consent, let those breaches of duty which are abhorrent to the proper continuance of the relation be the basis of dissolution; let the law be dictated by reason, in the light of duty and happiness, and not by dogma nor inherited or cultivated prejudice.

In 1916, while divorces for adultery increased in the United States 13.3 per cent over 1906, for cruelty they increased 75.8 per cent, for desertion 45.9 per cent, for drunkenness 30.6 per cent, for neglect to provide 85 per cent. This does not mean that cruelty, desertion or drunkenness are on the increase in any such proposition; indeed, there was a falling off from the increase of 1906 over 1896, of adultery from 55.1 per cent, cruelty from 119.5 per cent, desertion from 62.1 per cent, drunkenness from 49 per cent. The fact is that the laws were getting to be more liberal, and that those who would have suffered previously without redress were able to secure it under a more enlightened law.

It is noteworthy that over 86 per cent of all divorce cases in the United States in 1916 were uncontested. Is

it not really a fact, that when incompatibility for any reason whatsoever has reached the stage of a divorce court, it is not a matter of public advantage that the bond should remain? Courts have long recognized that it is an anomaly that spouses who are in the divorce court should live together; the purposes of marriage are substantially at an end; of what public interest is it that the marriage should continue as a state but not as a fact? We have no process for the restoration of conjugal rights, and a very inadequate process for the securing of material results; it is no violation of law for the spouses to dwell apart. There is, in fact, no shred of a real marriage left, except the ecclesiastical theory of a sacrament, the material theory of legal responsibility for certain necessities, and the legal figment of a continuing bond. Even the refuge of the sentimentalists, the children, is not a real excuse; for so long as the children are provided for, their welfare is not promoted by indecent or impossible conditions in the home.

In over 25 per cent of the divorces granted in the United States in 1916 the process was served by publication, indicating absent defendants, and this is some index of the migration for divorce purposes; in 63 per cent the residence of both of the parties was in the same state, in 22.5 per cent the defendant was a non-resident, in 14.6 per cent residence unknown. In New York, 86.7 per cent of the defendants were residents; in Nevada, 20.7 per cent; showing, in great probability, that the latter did a business for absentees of 74.9 per cent of non-resident defendants and 4.4 per cent of unknown residence. In short, Nevada is a haven of relief for those from outside the state; how many New Yorkers, contributed to the colony is not shown. Delaware, as a divorce state, showed 45.2 per cent, New Jersey 42.5 per cent, of non-resident defendants, North and South Dakota having receded from their former proud position of 61.3 per cent and 57 per cent respectively of non-resi-

dent defendants to 37.9 per cent, and 31.1 per cent respectively.

But let us look at this divorce business in another aspect. Of the 33,061 divorces in 1916, where notice was by publication, only 2.4 per cent were contested; of these most all defendants were non-residents, because while these divorces number slightly over 25 per cent of all, the non-resident defendants were 22.5 per cent. Under the ruling decisions in the United States and in this state, if the defendant was an absentee, was served by publication, or personally outside of the state, and did not appear, the alleged divorce is subject to collateral attack, and is not a defense to a charge of bigamy; a second marriage is adulterous; and its offspring (in New York at least) illegitimate. And yet, if New York had its fair proportion (10 per cent pop. U.S., 100,318,048; pop. N.Y., 10,192,323) of these non-resident defendants, who were divorced after service by publication and who did not appear or defend (and it probably had very many more than its proportion), then 3,306 divorces were granted in other states against residents of New York in 1916, which were for legal purposes not worth the paper they were written on; although in the vast majority, and probably all, of such cases, the defendant and plaintiff alike think they are free to marry; in many cases do marry innocent persons; and do have children assumed to be legitimate, but liable to be declared illegitimate at any time in any sort of collateral action. This 3,306 (probably much too small—as New Yorkers resort to other states for divorces in greater proportion than if her divorce laws were as liberal as other states) is more than 100 per cent (3,306: 3,269) as great as the number of actual divorces, both *a vinculo* and *a mensa,* granted in New York in the same year. If the assumption be true, as it probably is, then more than 50 per cent of the divorced people in New York believing themselves free to marry and to have legitimate children, are liable to

be bigamists, and to beget bastards; thus punishing the innocent, without necessarily being themselves guilty. New York only recognizes one guilt, adultery, and there is no need to resort to other states in such cases.

It is noteworthy, as bearing out the deduction above respecting migration for divorce purposes, that while the number of non-resident defendants was 22.5 per cent, the number of marriages in other states involved was substantially the same, 22.8 per cent. This migration is emphasized by the fact that in the twenty years from 1887 to 1906, the percentage of resident marriages dissolved in the United States was 68.1 per cent, while in 1916 it had fallen to 63.5 per cent. And yet it would seem beyond question that the twenty-year period from 1887 to 1906 was a period of greater bona fide migration within the United States than the year 1916 or years immediately preceding. But, if the number of marriages within the United States alone, and not including foreign countries, dissolved in other states, is considered, this percentage runs from 22.5 per cent to 26.4 per cent, and the increase of such marriages dissolved in other states from the former twenty-year period becomes 4.9 per cent. It is noteworthy, also, that the coincidence of migration and divorce, or perhaps migration for divorce purposes, is common to all but fifteen states.

The Bureau of Census (1916 Report, published 1919, page 20) considers that the changes point to the probability of an increasing tendency to migrate to secure a divorce; though not wholly indicative, because of the undoubted legitimate freedom of migration among the states.

> Although it is well-known that a change of residence is often resorted to for this purpose, particularly to certain so-called divorce centers. (page 21.)

In passing it may be interesting to note that in the United States as a whole permanent alimony was asked in only 20.2 per cent of the cases, and granted in 15.2

per cent (or to the wife, asked in 26.7 per cent, granted in 19.9 per cent), and that this is a very considerable increase over the previous twenty-year period, 1887-1906, whose figures were 13.2 per cent asked, 9.2 per cent granted. Whether this is due to an increase of wealth, or of mercenary spirit, or of liberality we can not say, but the substantial increase is noteworthy. The disposition of the states in respect to alimony is likewise interesting. To the husband: North Carolina, 3-10 of 1 per cent; Wisconsin, 25.1 per cent. To the wife: Pennsylvania, 3-10 of 1 per cent; Michigan, 60.9 per cent.

The relation of alimony to divorce is as follows: North Carolina, proportionate decrease, 1916, in divorces, 9.3 per cent; Wisconsin, proportionate increase, 1916, in divorces, 18 per cent; Pennsylvania, proportionate increase, 1916, in divorces, 64.5 per cent; Michigan, proportionate increase, 1916, in divorces, 63.5 per cent. In North Carolina neither divorce nor alimony seems popular.

The award of alimony and its incidents is continually an illustration of the application of false analogies and absurd measures in the administration of law. Alimony is relief, primarily accorded in the exercise of an inherent incident of the general jurisdiction of a court having power in matrimonial controversies.

Pendente lite, it is a judicial award to a party to the marriage relation, as a temporary measure of what the other spouse should justly do in a pecuniary way pending the determination of the facts in dispute and the permanent judicial action. Fundamentally, it should be ample to relieve the public of a burden; but administered in a court assumed to act in accordance with principles formerly administered in a court of conscience, it is what in conscience, all things considered, ought to be provided pending the ultimate determination.

Permanent alimony is a convenient expression, but

its permanency should be viewed in its proper relation. It should not be regarded as a commutation of property rights, because, except for inchoate dower, there is now in New York no vested property right arising from the marriage state, unless it be the wife's right to necessaries. It is a primitive view which regards alimony as a penalty; it should be a provision, and founded upon principle and not upon vagary. It should be, perhaps, an allowance adequate for a reasonable support of an innocent and injured wife, first, to keep her from becoming a public charge, and second, to avoid the hardship of being deprived of the station which she would enjoy if the marriage relation, in which she has been innocent, had continued. But it is not compensation for injury and should not be so regarded. As there is no fixed property right, it is not compensation for deprivation of property and should not be so regarded. As a provision, it should not be vindictive, nor a penalty; nor should it be an inducement to the formation of a new marital relation with another at the expense of the discarded spouse nor should it outlast a substantial change of circumstance for the worse of the party charged with the payment, nor for the better of the party to whom it is awarded. The spectacle of a re-married woman collecting alimony for her own use from a former husband, or a woman of independent means collecting it from a husband of impoverished condition, is foreign to the purposes or principle of true alimony. And the spectacle of a woman of independent means resorting to the imprisonment of an impoverished husband to satisfy her vindictiveness for unpaid alimony is abhorrent, or should be, to a sense of justice. Our courts have in the past not only punished the defiant, but they have ruthlessly punished the disabled or refused to consider the claim of disability. It is another of the anomalies of our law of marriage and divorce that a married woman is subject to the changing circumstances and vicissitudes of her husband's career, but a divorcee is treated as though

she had a vested right in his former condition, so that she is pecuniarily better off than a wife.

New York should not be content with her ostrich-like hiding of her head, in the foolish belief, that by refusing a divorce save for adultery, and by refusing remarriage to the so-called guilty party, she has solved any problem for her citizens—she is dealing with a problem of world-wide significance; which has stirred the antipodes as well as domestic circles; which has led to the creation of "divorce centers"; which, judged by probable proportions alone, has resulted in more irregular divorces in other states, for citizens of New York, with their train of scandal, possible crime, illegitimacy, and liability to the collateral attack of new relations, than of actual divorces for the one scandalous cause within the state, with all of its incidents of lubricity and nastiness, from which all but the prurient minded, whether judge, jury, litigant or court attendant shrink; and in which frequently, the injured party is subjected to as much indignity in court in the effort to secure the divorce, even if uncontested, as if guilty, and must ordinarily descend to methods to secure evidence of a secret offense which is abhorrent to the decently inclined.

It is often argued that illiberal divorce laws are necessary to the integrity of the institution of marriage and the perpetuation of the home. The reply is that neither marriage nor the home need such stays; if they did the fate of both would be substantially sealed. Frank discussion and not unthinking fear should determine our treatment of this vital problem.

MAN WHO IS CASTING OUT DIVORCE [1]

Much has been accomplished since W. W. Wright took office (as Divorce Proctor of Kansas City) two years ago last October. His previous investigations had

[1] By Courtney Ryley Cooper, author of "Divorced to Order," "Left Behind," etc. Ladies' Home Journal. 31: 20+. March, 1914.

told him that it was not the contested divorce case he must watch, for there both sides tell their story, but the one wherein a decree is granted by default—where the defendant stays away from court and allows the plaintiff to say what he or she pleases and get the divorce.

Two weeks after his appointment Mr. Wright faced one of Kansas City's Divorce-Court judges after the hearing of a default case. "And it please your Honor, I should like to question the plaintiff," he began. "I believe I can bring out some facts a bit different from the previous testimony."

The Court nodded; and with that nod there came the wild appeal of a divorce attorney: "I object! It's unconstitutional! This man has no right to question the plaintiff! There are no legal grounds for it! The statutes don't provide for any such thing!"

Whereupon the Court listened to opinions for half an hour, and to the oratory of an attorney, appearing for many of his brethren who saw fees slipping away from them, for another ten minutes. Then there came silence.

"Since the objection has been raised," the Judge said slowly, "I think we may as well settle this once for all. Mr. Wright is appearing as a friend of the Court. I feel satisfied that he has an entire right by law to do so. But, that the thing may be settled, I will bring in the decision on the matter. This case is continued three days, at the end of which time I shall give my decision."

Three days later a divorce attorney heard his client cross-questioned by W. W. Wright, a Divorce Proctor. The Judge had made his decision: The new officer was a friend of the Court, legally and rightfully; he had the power to appear in any case he chose.

That was in October, 1911. In October, 1912, W. W. Wright finished his first year as Divorce Proctor. Working alone and with many difficulties, unable to do one-

tenth the things he had desired to do because of lack of money, hampered by attorneys who fought him at every step, W. W. Wright in his first year as Divorce Proctor reduced the number of divorces in Kansas City nearly 40 per cent. The figures of the court of Jackson County show that from October, 1910, to October, 1911, there were granted twelve hundred and twenty-four divorces. In the year that followed Mr. Wright's appointment as Proctor the number of divorces was reduced to eight hundred and eighty-one. In the second year of the Proctorship the divorces were kept down to eight hundred and ninety, in spite of an unusual increase in population.

"But that many divorces are entirely too many," the Proctor asserts. "From what I have seen and learned of the viewpoint people of today take of marriage and divorce I am convinced that not one case in ten is legitimate. Give me the proper number of assistants, so that cases can be investigated as they should be, and I will cut divorce 90 per cent. I am not a disbeliever in divorce—when divorce is needed. In some cases it is a blessing and the only way out of a terrible marital mess. But the usual divorce is nothing more nor less than a crime. Some day it will be regarded as such."

Mr. Wright has grounds for what he says. During his work and investigation he has learned some surprising things concerning the attitude of an American city toward marriage. When he was appointed his first step was to learn what he could of this attitude, and a chance visit to the County Recorder's office, where marriage licenses are issued, gave him his primary insight. A young man and a young woman had come for the piece of paper which would give them the right to become husband and wife.

The woman laughed as she signed the big book. "Well, there's one consolation about the whole thing," she said as she turned to the man who was to be her

husband, "if we don't like it a divorce only costs ten dollars."

Wright whistled to himself, and when the pair had gone he turned to the County Recorder. "That sort of thing happen often?" he asked.

"Often? It happens half the time. And the worst of it is," the County Recorder finished, "they mean it. This marriage business is a joke nowadays. You see, half of them get married before civil authorities instead of a minister, and there's nothing serious or spiritual about it. I ought to know. I've been watching the thing long enough."

Mr. Wright then began work in earnest. Day and night he interviewed witnesses, as well as plaintiffs and defendants, in divorce cases; he went to court and cross-questioned plaintiffs on the stand in the default cases, and he discovered that marriage and divorce are no longer the serious things they once were; he discovered trickery and prejury; he discovered that the eleven causes of divorces which appear on the records of all courts are not the real causes. There is an underlying something which brings the other.

Perhaps one of the early cases Mr. Wright investigated will serve best as an example. He brought the couple to his office, a young man and a young woman, and he seated them opposite his desk that he might observe them both. "Now, young man, what's the trouble?" he asked.

The husband, dressed in working garments, looked at his wife in a half-abashed manner. "There's nothing the matter as far as I'm concerned. I love my wife, Mr. Wright; I'd do anything in the world for her. I want her; I——"

"That's all," the Proctor broke in. "Now, little girl, what is the matter with you? Does he mistreat you?"

The floodgates were opened. "It's just this," the woman answered—she was young, pretty in a way, and

her clothes bore the evidence of tawdry finery: "I just can't live with him. He's always embarrassing me; we can't go any place without me feeling hurt and——"

"What does he say?"

"Say?" The woman appeared surprised. "Why he doesn't say anything—that is, anything mean. Joe's all right that way."

"Then what is it? How does he embarrass you?"

The girl flushed. "Look at these clothes I've got to wear. He doesn't make enough money, Mr. Wright, to dress me or anything else. All the other girls I went with have good clothes and everything of that kind, while I—I—it's so embarrassing!"

Mr. Wright made a little note in his case-book to the effect that woman's vanity may wreck a home. Then he persisted: "And are you sure, absolutely sure, you don't want to live with him any longer?"

"Yes, I am."

"Then, little girl, I'll tell you something. You can't get divorce on the grounds you have given me, and, were you to go on the stand, I should be forced to show the judge just why you want a separation from this man. Did you ever realize that you were most selfish? Joe gives you everything he makes, doesn't he?"

The girl nodded her head in the affirmative.

"And you take it. Look at his clothes. Are they tailor-made? Look at his hands, where he has hardened them working for you. Don't you appreciate that, little girl? Can't you see that this man is just slaving for you, trying to make you happy? Can't you?"

So the words went on until presently a tear trickled down the cheek of the girl, and she reached uncertainly for the hand of the man she had desired a short time before to be free from. And W. W. Wright, newly appointed Divorce Proctor, continued to talk of the problems of life until he had talked the man and woman into each other's arms. Then he rose. "Now, little

girl," he said, "I see that you realize Joe's been doing his part. You must do yours. But, to make it easier for both of you, I'm going to get Joe a better job. By-the-way, you live in a boarding-house, don't you?"

"Yes."

"Get away from it! Go out and buy yourselves a house on the installment plan. You'll both have something of mutual interest. You'll have something to strive for and plan for and look forward to in life. I have not been investigating divorces very long, but I have already found that the main number of divorces come from the boarding-house and hotel districts. The life is too restless, too easy. Get away from it. The man and wife who own their own home and have something to think about besides themselves do not approach divorce lightly. A good piece of advice is to have children. They bind married folks together. Think it over. Good-by."

Since then more than one couple has left Mr. Wright's office with a better and fuller knowledge of what marriage means and what the relationship of husband and wife should be. Tens, scores, almost a hundred reconciliations have been effected by him; and, what is more, they have the evidence of being lasting. Trivialities have been cast out; the saner, more comprehensive view of life has been instilled into many minds. Men and women in Kansas City no longer get divorces for such trivial things as, for instance, a dislike of each other's hair. There have been such cases in the past. Of course that evidence did not show on the surface; trumped-up charges took the place of that. But the record-book of W. W. Wright, with page after page of notations concerning divorce cases, shows many an entry: "Too trivial; cast out by Court."

That is all, but it means much. It means that the sober-faced young Divorce Proctor has talked long to a wife who believed that she could not bear to live longer

with her husband; it means that he has struggled with the obstinate views of life taken by an unruly husband. He has pieced together between them a fabric they never knew existed before; he has shown them their faults and the remedy thereof; he has explained the trivial troubles of marital existence, which, piled together, make such an appalling array; he has shown them the way to happiness, and they are grateful.

But there are other cases which have been allowed to go the whole way and which have resulted in freedom for a wife or a husband. Mr. Wright does not believe that all divorces are wrong. He merely insists that most of them, according to the code of things as they should be, are criminally illegitimate, since they violate the laws of honesty and often of decency.

"I have come to the conclusion," he says, "that a man and a woman may be thoroughly honest in everything else in the world; they may abhor deception; but, let the divorce come up, they will do anything in the world to accomplish their desires. Time after time I have seen good women and good men go on the witness stand and perjure themselves without a bit of compunction. They believed they were doing the right thing for their own happiness."

Mr. Wright leaned forward. We were chatting in his office. "Two years ago," he said, "five young Kansas City couples were graduated from High School. They had known each other many years. They formed a set; they had their parties at each other's houses, went to the motion-picture shows together, dressed alike and really had quite a good time out of life. One day one of the ten suggested marriage. From a suggestion it went to something stronger. Just as the parties had been planned in the past so were those five weddings planned. Within a week the idea had been put into execution, and five installment houses were busily providing furniture for five new nests.

"It was all very pretty until one of the couples decided they were not agreeing well. Naturally the wife went to the other girls with her story, while the man went to the four other comrades of the past. Within a month one of the other wives had decided she was not happy either. Within a few more weeks another husband was dissatisfied. And soon there were five petitions in divorce brought by five wives. They were all to be default cases. The men would be just as glad of the separation as the girls.

"But the first case that came up was contested by me every step of the way. The girl perjured herself; I accused her of it on the stand, and she replied with more perjury. The case was held up by the Court. The other four applicants for divorce, seeing the troubles of the pioneer applicant, began to think a little. I went to see them about this time. I brought each couple to my office separately. I discussed their cases with them. I showed them that while they might not have entered into marriage seriously it was a serious matter. I made it plain to them that every one of them would have just as hard a time to get a divorce as the first girl had experienced.

"They began to think. And finally"—Mr. Wright smiled—"well, those couples have gone back to living together now, and so far as I know they are happy. They never had realized that marriage was anything except a pleasant little picnic; they did not realize that each person must be adjusted to the other, that marriage is a game of give and take, and that neither must be more selfish than the other. I believe they understand it now. In fact I know it."

He took a letter from his desk and held it meditatively before dropping it back into the drawer. "That's a letter from one of them thanking me," he remarked.

At this moment a living example of Mr. Wright's theme entered the office. He was middle-aged, of stolid

German type, and he waited uncertainly by the Proctor's desk until he had been motioned into a chair. He cleared his throat, he swung his hat, he looked at the floor.

Mr. Wright turned in his chair. "What's the matter, Mr. Straus?" he queried.

The man appeared easier. "I didn't know whether you would remember me," he said. "It's—it's about my divorce."

"The decree has been granted, hasn't it?"

"Yes."

There was a moment of silence, then Wright leaned across his desk. "And you want the decree set aside; isn't that it, Mr. Straus?"

The other man's face brightened. "Yes, that's it."

"What's the matter?"

"My conscience is hurting me, Mr. Wright. I didn't tell you the truth, and the other people you saw didn't tell you the truth. We all lied to you."

"And on the witness stand," the Proctor added; "that's a pretty serious thing, Mr. Straus. You are ready to admit now that your wife is not all the things you said she was?"

"Yes," the man answered. "I——"

"Then why did you get the divorce, if you are willing to take her back now?"

The visitor became nervous again. He shuffled his feet and swung his hat once more. "You'll think I'm a fool," he said. "But you see I just put myself in the hands of my lawyer and did whatever he said. I wanted to go back to my wife before the case came up, but he told me it wouldn't do any good; he said that while we were started we might as well go ahead and get the divorce, and I——"

"And you got it. You didn't stop to realize that this lawyer was only thinking of himself and his fee. You thought he was looking out for your best interests, when the truth of the matter was he believed it would

be easier for him to get his money by a default divorce than by effecting a reconciliation. As I remember, you testified that your wife, whom I was unable to see and talk to, frequented saloons and disreputable places. Was that the truth?"

"Yes, it was in a way," he answered. "But I didn't tell it all. You see she distributes tracts. She does go to saloons and places of that kind, but she goes there to help people and try to 'save souls,' as she calls it. I don't like this religion thing. That's about all I've got to say against her. And so, when it came to the testimony, I just said she went to those places, and I didn't tell why."

"I remember—perjury by left-out testimony. I don't know what I can do in your case, Mr. Straus. You have the power to marry your wife again if she will consent to it. It's time you did a little thinking. You're beginning to realize what you have done. You are just one of the hundreds who rush into divorce and then are sorry for it afterward. That's all, Mr. Straus."

"One of fifty," said Mr. Wright, when the door had closed behind the visitor, "who have come to me in the last year, confessing perjury and asking that the decrees be set aside. It is just such testimony as this, or the lack of testimony, that constitutes perjury in 90 per cent of the divorce cases of this city and many another city in the United States. Divorce is pretty much the same all over the country. It is just worse in some states than in others. More homes are being ruined by a foolish desire for freedom and by perjury through left-out testimony than by all the other causes of domestic unhappiness. And I don't know who is most to blame, the perjurers themselves or the lawyers who show them the way, who ask the guarded, tricky questions by which the plaintiffs are allowed to give their perjured answers—dishonest attorneys who are only after the money the divorce decrees will bring them. Look here!" The

man who is making divorce unpopular in Kansas City took a letter from his desk. It bore the engraving of a lawyer's office in another state. "Just to show you that the thing is practiced generally," the Proctor said as he opened the letter. "This little missive was handed to me by a Kansas City attorney. Read it."

I opened the letter and saw therein some of the machinery of divorce:

Dear Sir: I understand that you are attorney for Mrs. Green in the divorce case of Green versus Green. As I am the attorney for Mr. Green I thought we might be able to get together on the proposition.

I see no reason why we should not be able to get together, do you? In such event we could easily handle the case as we saw fit and divide the pile.

It should be easy to separate this couple.

"Notice that last line," the Divorce Proctor advised. "No hint of reconciliation; no desire for anything but to separate a man and his wife. Here is another sample."

This time the letter bore the imprint of one of the most "respected" lawyers in Kansas City. It had been written to a man in Chicago, concerning a divorce pending against him:

Dear Sir: We see no reason why you should be present at the hearing of the divorce suit against you. In cases where there is no contest the Court allows the decree on very general testimony and very mild evidence. There will be nothing embarrassing in any way.

In regard to the payment for my services in gaining the divorce for your wife, will say that you can begin paying the money now, in installments if you please, or allow it to be fixed by the Court. It is always best, however, to keep such matters out of the court records if possible.

We note what you say regarding a reconciliation. In all the experience of this office we have found it quite impossible to effect reconciliations. They only cause more pain.

I looked up the record of this case and found that after the lawyer's suave and persuasive letter he had urged the wife in question into going on the stand and swearing that her husband was everything from a two-gun man to a bloodthirsty pirate!

Mr. Wright smiled when I spoke of it. "One of the tricks of the trade," he answered. "Assuage the husband, keep him away from court, and then go ahead and do as you please. That's the way it has been in the past. I believe, however, that the future will bring some radical changes."

"Then the dishonest lawyer can really be counted as a cause of divorce?"

The Proctor's doubled fist struck his desk emphatically. "As a vital factor!" he exclaimed. "The dishonest lawyer and the meddling neighbor and the too intrusive relative are three of the really important wheels which keep the Divorce Court grinding. They are ever ready, always waiting for the first unpleasantry. After that they attend personally to the widening of the breech. There can be no happiness when those three factors enter. The figures show that too many women are easily swayed by such influences.

"It surprised me when I first learned that the trivial divorces are mostly brought by women. Once in a while there comes a case where the man is to blame, but the usual case is on the other side. For instance," and he consulted his figures, "during the fiscal year of 1911, when twelve hundred and twenty-four divorces were granted, nine hundred and eleven women were successful plaintiffs, while three hundred and thirteen men received decrees. In other words men are not so prone to divorce as women. They do not take up the trivialities and store them in their minds until they become a bugbear to life. One reason, I believe, is that men have something else to think about. There is a quarrel at home. They are angry for a time, but soon their work has crowded new thoughts into their minds and they have either forgotten or forgiven. But with the woman it is different. She stays at home and broods over what she believes to be her great unhappiness; or worse, takes her troubles to her relatives or neighbors. When she does that there is pretty sure to be trouble."

The judges have so repeatedly been influenced in their decisions by Mr. Wright's reports and by the testimony he has brought out after an injured wife or husband has sworn almost exactly the opposite that the investigator has become a vital asset to the courts in the true hearing of cases. Indeed within two months after he had been appointed to his office the funds of the City Club, from which he was being paid, gave out. There was no Divorce Proctor because there was no money to pay the Divorce Proctor's salary. Eight cases were up for hearing in Judge Thomas's court.

The Judge looked at the faces about him. "What's the report of the Divorce Proctor on these cases?" he asked. There was no answer. The Judge rapped his desk. "Where's the Divorce Proctor?" he demanded.

"There isn't any," the clerk of the court answered. "The funds gave out and so he gave out too."

"What's that?" Judge Thomas's tone was surprised and emphatic. He left the bench and hurried to confer with the other judges. In an hour he was back. "Set these cases over a few days," he ordered the clerk, "until we can get Mr. Wright appointed a deputy probation officer. That'll give him a salary and allow him to go on with his investigations. I'm not going to try a divorce case without the report of the Proctor. He's too indispensable."

AFFIRMATIVE DISCUSSION

UNIFORM DIVORCE BILL[1]

The uniform divorce bill (S. 4394) introduced in Congress on January 23, 1923, by Senator Arthur Capper was preceded by the introduction of a joint resolution proposing an amendment to the Constitution of the United States in the following language:

> The Congress shall have power to make laws, which shall be uniform throughout the United States, on marriage and divorce, the legitimation of children, and the care and custody of children affected by annulment of marriage or by divorce.

The Divorce Bill prepared at the direction of and sponsored by the General Federation of Women's Clubs, contains thirty-eight sections designed, as its sponsors say, to prevent hasty and foolish marriages and to make divorce more difficult.

The enabling constitutional amendment was proposed so that such a law when passed would meet the test of the courts. The legislation was prepared at the direction of the Federation by Mrs. Edward Franklin White, Deputy Attorney General of Indiana. Senator Capper was selected by the Federation to introduce the bill and constitutional amendment resolution.

The legislation attempts to embody many of the decisions reached by conferences and agencies which have been studying for years the solution of the manifold perplexing problems arising from ill-considered marriages and divorces. The age at which girls and boys may marry with consent of the parents is fixed at sixteen years for girls and eighteen years for boys. In case of emergency, when it is expedient for those under

[1] From Journal of Social Hygiene. 9: 170-3. March, 1923.

this age to marry, permission must be obtained either from the judge of the juvenile court or from the judge of the probate court, in the city and county in which the marriage is to take place. Age at which girls and boys may marry without consent of the parents is fixed at eighteen and twenty-one years respectively.

Marriage is forbidden of the feeble-minded, of those afflicted with epilepsy, insanity, or communicable disease, and of those within the first degree of relationship.

Application for a marriage license must be made by one of the parties to the prospective marriage two weeks before issuance of license. Both parties must present affidavits certifying that they are not afflicted with communicable disease and are of normal mentality. The application must be posted in the office of the clerk and in his public record. Two witnesses in addition to the one who performs the ceremony must be present at every marriage. Marriages must be reported in the county and in the state in which they take place. Penalties are attached for infraction of this law.

Divorces will likewise be safeguarded under the terms of the proposed law. Decree of divorce will be granted on the following grounds; adultery; physical and mental cruelty; abandonment or failure to provide for one year or more; incurable insanity; or the commission of a felony. In committee it is hoped that these provisions will be clearly and carefully defined.

Applications for divorce must be made sixty days prior to the trial of a case. Every effort must be made to reach the respondent through personal service. If this is impossible, then notice of the application for divorce must be published weekly in a paper of general circulation in the town of his or her usual residence. If the respondent fails to answer, then his or her name must be listed on the appearance docket of the court in which the case is to be tried and the judge will assign a member of the district attorney's office to represent the state in the trial of the case.

The guardianship of the child or children shall be equal, if both parents are fit, but where the mother is mentally and morally fit, she shall be awarded the custody of the minor children. Both parents shall have access to the children unless there is some powerful reason why this should not be so. In all cases the welfare of the children shall be the first consideration with the judge who awards the custody. Alimony and support of the children shall be left to the discretion of the judge.

An interlocutory period shall elapse after the granting of a divorce before the decree becomes final. During that year neither party to the divorce may marry again. In case of reconciliation, the two may take up their lives together again upon dismissal of the divorce suit during that period.

Enforcement and application of this law is left to the state courts and their machinery. No new Federal bureau is created by the legislation. It is the contention of those advancing the bill that divorce will not be made easier by it. While this law will enlarge the grounds for divorce in two or three states, they claim, it will at the same time adjust the differences in the other forty-five states and bring them all to a common point of understanding—one which will permit justifiable divorce and do away with migratory divorces and with the many injustices which they often bring about. One who is legally married in one state will be legally married in another. One who is legally divorced in one state will be legally divorced in another. Children who are legitimate in one state will be legitimate in all states.

A recent compilation of statistics concerning marriage and divorce in the several states reveals the following:

Thirteen thousand girls, 15 years old, legally married.
Fifty thousand, 15 years old, married.
Sixteen hundred boys, 15 years old, married.
Three thousand boys, 16 years old, married.
No minority age limit for marriage in seventeen states.

Legal marriage age for girls, 12 years, and boys, 15 years, in nine states.

No prohibition of the marriage of the feeble-minded in nineteen states. Where prohibited, the feeble-minded may marry on his or her sworn statement of legal mental capacity.

In thirty-five states there is no prohibition of intermarriage of the white, black, brown, yellow, and red races.

Inherited diseases of children of feeble-minded, tubercular, and otherwise diseased parents, whose marriage was and would be now legal in most states, costs $50,000,000 for care each year.

Divorce, not obtainable on any ground in one state, is granted in another on evidence of bad temper of husband or wife.

PROPOSED AMENDMENT TO THE CONSTITUTION[1]

I have been surprised and pleased with the very fine response that has come from all over the country with reference to this proposed legislation. Not only from women's organizations, but it has been noticeable more particularly that the proposed legislation seems to meet with the approval of the legal fraternity and the bar associations throughout the country.

The two features of the proposed amendment which I shall try to put before you are: (1) The necessity for a Federal marriage and divorce law; (2) The necessity for an empowering amendment to the Constitution enabling Congress to enact such a law.

I do not believe that there are many thinking men and women in this country who have not come to see that one of our great social and moral needs is a Federal marriage and divorce law. As all those present here know, divorce has been increasing with an alarming rapidity until, according to the latest statistics compiled by the Federal Bureau of Census, there is one divorce to less than every seven marriages in this country. There is only one reason for this—aside from the

[1] Statement of Arthur Capper, United States Senator from Kansas. United States Senate. Committee on the Judiciary, Marriage and Divorce; hearing before a subcommittee on S. J. Res. 5. 68th Congress, 1st Session. p. 1-5. January 11, 1924.

natural and incontrovertible perversity of human nature —and that is the case with which the unfit and the immature are permitted to marry. Divorce, as an institution, in itself is not an evil. In fact, since marriage is a partnership which to fulfill its purpose, must be conducted in harmony and cooperation, there are times when it is an absolute necessity. But it is the abuse of divorce which has become an evil. And these two factors—the marriage of the unfit and the abandon with which divorce is granted in some states, have contributed to the high divorce rate which, if it continues, will in time disintegrate the family life of the nation. And if the family life is destroyed, the nation itself must suffer, since the family is the recognized fundamental unit of all civilization.

As you also know, we have in this country forty-nine varieties of marriage laws, those of the forty-eight states and the District of Columbia. There are eighteen varieties of divorce laws; one state, South Carolina, does not permit divorce on any grounds. According to the latest available statistics, taken from a survey made by the Russell Sage Foundation, seventeen states fix no marriageable age—that is, an age at which young people may marry with consent of the parents. In nine of these, the common-law ages of twelve for girls and fourteen for boys have been formally recognized. In two states the marriageable age is fixed as twelve for girls and fifteen for boys. In one state, it is thirteen for girls and fourteen for boys. In three states it is, respectively, fourteen and sixteen. While the majority of states place the legal age at which girls and boys may marry without consent of the parents at eighteen and twenty-one, there are two states which permit the marriage of girls of sixteen without consent of the parents, and four states which permit the marriage of boys at eighteen without consent of the parents. Although the majority of the states prohibit the issuance of a certificate to a minor below the specified age for marriage without con-

sent of the parents, yet twenty states prescribe no penalty for the official who issues the certificate without the required consent. While all states have provisions requiring marriage licenses, the provisions guarding these provisions are feeble in the extreme. In three states, a license is not imperative if the marriage is previously announced by bans. Only six states make it imperative that both parties to a license must be present at its issuance, and only three states which insist upon a lapse of time between the application of a license and its issuance. Only seventeen states have specific enactments against the common-law marriage. There are other divergences in the laws, but I think these are sufficient to prove my point. Now, the evil of these divergences is that many states do not recognize the laws of other states. For instance, there are states which forbid the marriage of the feeble-minded among their citizens, annul the marriages if the young people go into another state and are married not according to the law of their own states and return to their home states to live.

On the other hand, many states do recognize the laws of other states, which means that no matter how wise the laws of a state may be, young people may evade these laws by going to some other state where the laws are less wise and marrying when they are either illy prepared for marriage or unfit for it.

The toll of feeble-minded in this country is rapidly increasing, for it is a scientific fact that no two feeble-minded people have been known to produce a normally minded child. Last year, according to figures compiled by the American Association of Mental Hygiene, over $50,000,000 was expended in this country for the care of the mentally unfit.

According to statistics of the Bureau of Census, last year there were 1,600 married males of fifteen in this country, 3,222 married males of sixteen, 7,699 of seventeen, 24,944 of eighteen, and 58,909 of nineteen. Of these, respectively, according to the ages consecu-

tively, the divorce toll was 82, 144, 266, 770, and 1,327, a total of 2,589 divorces of boys under legal age. According to the same bureau, 12,384 girls of fifteen were married. At sixteen, the number was 41,626, and at seventeen, the number was 90,930. Divorces for the corresponding ages were, respectively, 499, 1,268 and 2,792. The total for girls under eighteen was 4,559.

As for the divorce laws, they vary even more astoundingly. From no ground in South Carolina, to fourteen grounds in New Hampshire, the scale runs through two, three, four, five, six, seven, eight, and eleven grounds. While the majority of states recognize the divorce laws of the other states, there are at least eight states which do not recognize them unconditionally. And as the period of residence required before a divorce suit may be brought ranges from six months to three years and as the provisions regarding the process of summons vary, more and more we see complications in the court where the defendant in a divorce suit applies to the court of his or her state to set aside a divorce granted to the plaintiff in another state whose laws conflict with the laws of the defendant's state. Often those securing divorces in a state outside of their own state marry again and have children by their second marriages, and, returning to their own states, are confronted with suits by the divorced wife or husband seeking to annul the divorce. When the suit is successful, this means that the second marriage is nullified and the children are illegitimated.

As a flagrant example of such conflict of laws, we may take New York state, whose law permits divorce upon two grounds—infidelity and the disappearance of either party for five years. Those who have the wherewithal to leave New York may go to Reno, Nev., or to Rhode Island, or to Paris, France, and, establishing a residence, secure divorces. There are in the court records of New York state a number of cases where these divorces were annulled on the ground that the

defendant was not served according to the laws of New York and that the divorce is therefore invalid. Another evil in this diversity of law is the evasion of the law of the other states in the way of establishing false residence. In several states renting an apartment and keeping one's belongings therein for a stated period of time often passes for an established legal residence.

In Nevada, for instance, the residence period is only six months, and while the law demands actual residence in that state for six months prior to application for divorce, there is frequent evasion of the law—not necessarily within the knowledge of the courts. In Paris, I understand, it is now necessary for both husband and wife to be in France, but only for a period of three months. The daily papers are sufficient evidence of with what ease the wealthy have been able to secure divorces in France, by the simple matter of collusion. And this fact makes the New York divorce law a discriminative one, as it means that the wealthy who wish to have their marriages dissolved without the necessity of proving infidelity, may have their divorces by going to another state or country, but the poor must stay at home and bear the burden of their ill-mating.

I shall now go into the necessity of an amendment. I know that at this time in the country there is a feeling among certain groups that the Constitution is suffering from too many amendments. They argue that if the great men who drafted the Constitution had thought it necessary to grant Federal power to regulate marriage and divorce they would have done so. But it must be remembered that social conditions were less complicated than they are today. The population was not so vexed with racial problems. The thirteen original states were for the most part constituted of Anglo-Saxons and a small part Scotch, French, and Irish. They were much of the same mind about marriage and divorce. Woman's economic status often held her to marriage no matter how great the misery of it. Transportation was

difficult, and it took more courage than the average eloping couple have to spend several days of hardships in order to run from one state to another. Besides our forefathers were so taken up with the problems of forming a stable government that social questions—which were not then given the consideration they are today because of modern scientific research—were not taken into account. But these great men evidently did have some foresight as to what might happen when the country expanded and its populations became denser and more diverse. For they drafted into the Constitution Article V which defines the process of amendment. It is also well to point out at this time that Article IV of the Constitution provides that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. Now, when a court in one state dissolves the divorce granted by a court of another state it seems to me that it is going against the provision of this article. And yet this has been done and the decision upheld by the supreme court of the state in which the divorce has been annulled.

Truly, this is a process without reason and wisdom. It leads to complications which are having a definite effect upon the integrity of the family and upon the morals of the country as a whole. It seems to me there is no greater question before the country today than that of establishing a sane, just marriage and divorce law which shall be alike in all of the states, one which shall do justice to both parties and the children which are the fruit of their union. This cannot be done without an amendment to the Constitution, and I plead for thorough study of conditions by this committee and the recommendation for a passage of an amendment which shall give Congress the power to enact this much-needed legislation. With me in my plea are a number of the largest women's organizations in America, the General Federation of Women's Clubs, the National Congress of Parent-Teachers, the National Federation of Busi-

ness and Professional Women, the Woman's Christian Temperance Union, and the American Association of Home Economics.

MARRIAGE AND DIVORCE[1]

The amendment has been regarded as necessary in order to establish a uniform law. There has been nothing found in the Constitution, neither phrase nor sentence, that will authorize the Congress to enact a uniform law, notwithstanding Congress has adopted three measures which relate to the states; interstate commerce, bankruptcy, and naturalization. But there seems to have been found no authority that authorizes Congress to enact this legislation. That has been recognized also by the United States Supreme Court, as I shall mention later. So that the question then is, how shall we get uniform legislation? As was said by Senator Capper, there has been an effort made by the American Bar Association, through its uniform laws committee, to establish this by state action. That has failed. They have failed to pass uniform laws, and it will always fail, because when the legislature in one state meets it can adopt a marriage and divorce law, or an additional ground of divorce, or something of that sort, that will upset the whole uniformity.

Of course, it is true that every state does have comity provisions with reference to laws; that the laws of every other state, and the decrees of its courts, shall be respected. If the laws of every other state with reference to the grounds for divorce and the qualifications for marriage are recognized, then the laws of a single state are of no avail. The law of a single state must be empowered and overridden by the laws of all

[1] Statement of Mrs. Edward Franklin White, Deputy Attorney General of Indiana, Indianapolis, Ind. United States Senate. Committee on the Judiciary. Marriage and divorce (amendment to the Constitution. Hearing before a subcommittee on S.J. Res. 5. 68th Congress, 1st Session. January 11, 1924. p. 11-14.

other states. So that there can be no state government which has entire control over its citizens. It may have control over its citizens while they are resident within their state, because by our law the domicile of the marriage relation controls the contract. Marriage is not an institution, but is a contract; a civil contract; it creates a civil status. That civil status follows, or should follow that married pair, or their children, no matter in what state they live. But as you know a married pair may change their domicile from one state to another and preserve their United States citizenship at the same time. So that they would be able, as we believe, to take their civil status with them to another state. And we believe that Congress should have just the same right to enact laws concerning the removal of the civil status of a pair from one state to another as they do over the removal of grain and manufactures under the interstate commerce laws, because it does create that contract. And, therefore, I believe that while the states have exercised their law to regulate contracts, and to regulate this contract, among other contracts, that states should not have the right to prescribe the civil status of a married pair that will not be recognized in every other state.

The contract of marriage is different from other contracts in that the parties cannot terminate it at will; it must be terminated by the sovereign power of the state. So that is the reason we think it is necessary to have such a Federal law.

The marriage law and the divorce law of New York has been mentioned. And the divorce law of New York has been used as an example of the situation in the United States Supreme Court. Citizens of New York may migrate to another state and secure a divorce under the laws of that state, and that divorce will be recognized in New York if it has in that other state also met the conditions and the requirements of the New York law. And the special requirement that I refer to is the

matter of notice. That if notice of the divorce is made by publication in other states, it does not comply with the New York law. In other words, that state has not jurisdiction of the parties in accordance with the New York law.

I believe that the question of the civil status, the civil contract of marriage, should be just as much a matter of interstate commerce as transportation. I believe that family bankruptcy is as much a matter of Federal recognition as financial bankruptcy. And I believe that the creation of the civil status is just as much a matter of Federal cognizance as the naturalization of a citizen.

Many things have been said here regarding the growth of divorce. Now, I take it that such a discussion as that is not exactly in point here today, because the question is on the adoption of the amendment. But I want to call your attention to one thing that conduces to the great increase in divorce—and this was brought out by the survey made in our own state of Indiana by an Indianapolis newspaper. We have two Gretna Greens in Indiana: One just across the river from Louisville, and one just outside of Chicago—Crown Point; and the marriages that have taken place in spite of the law that exists in Indiana that the license must be secured in the county of the woman's residence—in spite of that a very great number of licenses are granted at Crown Point, in Lake County, and at Jeffersonville, in Clark County. The survey made through the newspaper shows that 75 per cent of the marriages taken place in Jeffersonville are illegal; the licenses illegally granted, and further shows that 75 per cent of those thus taking place have resulted in divorce. The reason for that is that in thirty-two states marriages may be annulled for nonage. That has resulted in this situation—and this is no fairy story I am telling you—that at parties of high school boys and girls, that frequently the party winds up by the party going to another county and securing

licenses and five or six of the couples becoming married knowing that the marriage may be annulled when the lark is at an end and their parents have found it out.

The bill provides that the enforcement shall be in the state courts, because it was felt that to crowd the divorce proceedings in the Federal courts would overcrowd them. It is entirely proper to put this enforcement in the state courts. And the law itself is the final product of the American Bar Association's uniform laws committee, because it is their law with considerable additions and modifications, but it is grounded upon that. But the discussion now, of course, must center in the adoption of the amendment and the necessity for it, and I feel in my own mind that there is no other way out of it. The adoption of uniform laws by the states, in the first place is practically impossible. Theoretically, it is possible, but practically speaking it is impossible; and the result is that the uniformity may be upset at any time.

SHALL CONGRESS BE GIVEN POWER TO ESTABLISH UNIFORM LAWS?[1]

The growing tendency of the American people to seek divorce, the apparent feeling in certain circles that the relation of husband and wife, that most sacred of all personal relations, is a mere legal ephemera, suggest serious and pressing questions worthy of investigation. Whether the evils resulting from our divorce law have or have not attained the dimensions portrayed by alarmists, they should be dealt with by our moral and political philosophers as things manifestly tending to degeneracy.

Whether or not uniform divorce laws should be established by Congress among the states of the union, is a broad and intricate question.

In attempting to answer the above question, the ut-

[1] By Jennings C. Wise, Richmond, Va. Central Law Journal. 70: 93-9. February 4, 1910.

most caution must be observed, in order that we fail not to discriminate between the moral and legal phases of divorce. The hypothesis, in which we are given divorce laws, precludes the necessity of our passing upon the morality of divorce. In effect, the question is—Shall we unify existing sanctions to the dissolution of the marriage relation? Shall the states composing the union surrender, by amendment to the Constitution, their exclusive jurisdiction of divorce and authorize Congress to pass uniform laws upon the subject. Common sense and good morals as well, suggest that such additional power be vested in the central government. Keeping ever in mind the fact that we are not to concern ourselves with the moral phase of divorce, let us investigate the present status of divorce in this country.

We find that with the exception of South Carolina, every state in the union sanctions the dissolution of the marital relation through divorce laws each prescribing in what manner and upon what provocation the bonds of matrimony will be severed. According to the jurisdiction, the parties desiring legal separation find it more or less difficult to satisfy the courts that the necessary requisites to bring them within the sanction exist, that prescribed conditions obtain in their particular case. It will be observed that here, the moral phase of divorce more nearly coalesces with the legal phase than at any other point of our treatment, for granted that release from the marital bonds is itself moral, the grounds upon which in a given instance it may be sanctioned may be insufficient to the point of immorality. But again, let us recall that it is with the expediency of uniformity of the grounds only with which we are to deal.

What is it then that is claimed to create the necessity of uniform divorce laws among our states? The answer is that the uncertainty of status as a result of the variance between the laws of our states gives rise to abuses

and evils which require a corrective. Then let us investigate this variance and weigh the materiality of the evils resulting therefrom.

The variance between the divorce laws of our states will be found to exist with respect to the grounds upon which a divorce may be obtained, as to matters of jurisdiction, as to matters of defense and lastly, as to the penalty imposed upon the guilty party or parties. Now let us consider each of these forms of variance in turn.

1. *Grounds.* A careful study of the various grounds of divorce recognized in the different states will lead us to the conclusion that uncertainty of status does not result to such a degree from this as from the other forms of variance and that it concerns more intimately the right to a decree of divorce than the status of the parties as effected by such a decree. The minute we enter into a discussion of whether certain grounds as established by a state are proper or improper we are verging upon if not intruding upon the moral phase of divorce. Again, should we pursue the question of uniformity of grounds of divorce, because parties may now go into one state and secure a divorce on grounds held insufficient therefor in the state from which they came, we would intrude upon the matter of jurisdiction. For the present then, we will dismiss this form of variance as a cause of that uncertainty of status on account of which uniformity in our divorce laws is claimed to be necessary, and examine the variance of jurisdiction with which it is almost inseparably interwoven.

2. *Jurisdiction and Defense.* For a most valuable treatment of the subject of "The Dissolution of the Marriage Status by Divorce," we refer to Minor's Conflict of Laws, Chapter VII. In this investigation we should confine ourselves to that portion of the above treatise dealing directly with matters of jurisdiction and defense, for the uncertainty of status now existing as a result of the various theories propounded by our states,

and upon one or the other of which theories the states base their laws, will be clearly brought to view. In dealing with these several theories, Mr. Minor writes:

Many theories have from time to time been advanced by the courts, some of which have been incidentally adverted to in prior sections of this work, and all of which have now been pretty generally discarded, except three leading ones. The first of these is entirely favorable to the resident plaintiff, sacrificing to the sovereignty of his domiciliary law all the rights of the defendant. The second is entirely favorable to the non-resident defendant, sacrificing the rights of the plaintiff to the sovereignty of the defendant's domiciliary law. It forces the plaintiff for the most part to sue for his divorce in the courts of the defendant's domicile, and requires him to subject himself to its laws. This theory is supported by the courts of New York, and may be designated "the New York doctrine." The third strikes a happy mean between the first and second, and while giving to the plaintiff all the rights conferred by his own law, permitting him to sue in the courts of his domicile, yet requires that the defendant should receive a more substantial notification of the existence of the suit than is afforded merely by a published advertisement in a newspaper of the plaintiff's domicile. This may be designated "the New Jersey doctrine," and is believed to be the soundest. The theories thus briefly outlined will now be elaborated more fully.

First Theory. Jurisdiction over one party confers jurisdiction over the other also. According to the first theory, in order that the divorce court may have complete jurisdiction of the res, so that its decree will receive recognition everywhere as dissolving the relation of husband and wife, it is only essential that one of the parties should be domiciled there—it is immaterial which, although it will usually be the plaintiff. The courts of that party's domicile, having jurisdiction over his or her status will draw to themselves, by reason of the mutuality of the marriage relation, jurisdiction of the status of the other partly also thus acquiring jurisdiction of the status of both. The case (under this theory) is practically identical with that where both parties are domiciled within the limits of the state of the divorce, and the proceeding, as in that case, is regarded as one strictly in rem, the personal element of the proceeding being disregarded altogether. Hence (under this theory) only such notice is required to be given the non-resident defendant as is required by the municipal law of the state of divorce in order to give its courts jurisdiction—frequently nothing more than an advertisement published in some obscure newspaper of that state.

It will be observed that this doctrine upholds in full measure the sovereignty of the plaintiff's domicile with respect to his status, but in so doing it oftentimes permits grave (and very

unnecessary) injustice to be done to the defendant, who frequently finds himself or herself divorced, without any previous knowledge whatever that proceedings for that purpose were pending. The laws and procedure of the plaintiff's domicile are devised to protect the plaintiff's interests, not those of the alien defendant. This constitutes the weakness of this theory. Its tendency is to violate that general principle of private international law that no man should be condemned unheard. It is a different case from that of a proceeding against property of the defendant. In that case a general publication is deemed sufficient because it is practically certain that the owner will be promptly notified of any blow aimed at his property. But his status is a more tangible thing, and more personal in its nature.

Second Theory. Divorce a Proceeding in Personam. So impressed have the New York courts been by the personal element in the suit for divorce, and the dangers threatening the non-resident defendant under the first theory that they have adopted as extreme (and unjust) a view in the other direction. According to this second theory, the personal element above mentioned preponderates, and causes a proceeding whose purpose is to dissolve a status to be regarded in the light of a proceeding in *personam* rather than a proceeding in *rem;* and the same process is required to bring the defendant before the court as is required if the design were to fasten upon him or her a general pecuniary liability. The New York courts hold that no foreign divorce obtained in a state where the plaintiff alone is domiciled will be valid extraterritorially, unless the defendant voluntarily appears or is personally served with process within the territorial jurisdiction of the divorce court.

This theory gives undue weight to the personal element involved. It magnifies the rights of the defendant, and goes far to insure that no injustice will be done that party; but it will frequently be at the expense of the plaintiff and the sovereignty of the plaintiff's domicile. It practically, in many cases, forces a plaintiff who desires a divorce, at the very least to seek out the defendant, and sue in the state selected by the latter, for the very reason perhaps that its laws are more hostile to the plaintiff than his or her own; and, since the municipal laws of most states require the plaintiff to be domiciled in the state where he seeks a divorce, this theory would often compel him to abandon his own state altogether, and take up his permanent residence in the domicile of the defendant, or else forego his right to a divorce entirely. It pays no heed to the sovereignty of the plaintiff's domicile and its control over his status, which is just as pronounced as that of the defendant's domicile over the status of the latter. These are serious drawbacks to this theory—so serious indeed that it is not surprising that most courts have rejected it as unsound.

Third Theory. Divorce Neither in Rem nor in Personam, but Quasi in Rem. Requires Best Notification Practicable to Non-Resident Defendant. The third theory, adopted by the courts

of New Jersey, is the best in point of reason, principle, and justice to all parties, combining as it does the advantages of both the other theories, and minimizing the disadvantages of both. According to this theory, the personal element entering into a divorce suit is neither disregarded to the extent of making the divorce a proceeding in rem, nor so magnified as to make it a proceeding in personam. It is accorded its proper weight, and the divorce is regarded as a proceeding quasi in rem, that is, it is sufficiently a proceeding in rem to permit a court having jurisdiction of even part of the *res* to adjudicate upon it, without having to bring the person of the defendant within its jurisdiction, either by voluntary appearance or by service of process within the territorial limits of its authority; yet sufficiently in *personam* to require something more than a mere advertisement of the pendency of the suit, if more than that is practicable.

Full effect is thus given to the sovereignty of the plaintiff's domicile and to his or her rights. The plaintiff is permitted to get the full benefit of the divorce laws of his own state, and is not required to go to the state of the defendant and subject himself to its laws in order to obtain his divorce. The jurisdiction of the plaintiff's domicile over his status is recognized everywhere. The only limitation (and it is surely a most reasonable one) is that the non-resident defendant should be actually notified of the pendency of the suit, where that is practicable, by mail, message, or actual service of notice (not by advertisement merely).

This affords almost every protection to the defendant which is obtained by the New York rule, and at the same time leaves the plaintiff's rights and the sovereignty of the plaintiff's domicile untrammeled, save by a regulation for the protection of the absent defendant, which, while it can do the plaintiff no injury, affords a protection against the prostitution of justice, which it should be the lofty aim of every system of law to prevent.

This theory does not absolutely demand in all cases, in order to an exterritorial recognition of divorce, actual notice to be given the defendant, but only that the best notice practicable be given him or her. If his address is known, actual notice in some form is necessary; if unknown, only reasonable notice and opportunity to be heard is required. Of course, therefore, the voluntary appearance of the defendant will supersede the necessity for specific notice.

It will be remembered that when the decree directs that the guilty party shall not marry again, the better opinion is that such part of the decree is in *personam*, not in *rem*, and hence the court is without jurisdiction to make such a decree against a non-resident defendant, unless he or she has voluntarily appeared, or (perhaps) has been personally served with process within the territorial jurisdiction of the court. And even, then,

such part of the decree, being in the nature of a penalty, will be given no exterritorial effect.

From this presentation it is clear how uncertain may be the status of divorced parties upon a change of domicile if viewed from the standpoint of the new jurisdiction, and in many cases when viewed from the standpoint of the domiciliary law itself. No argument should be required to impress upon an intelligent mind the expediency of unification as to matters of jurisdiction and defense, for the abuses which the existing variance here leads to are manifest. What argument in favor of such variance can be sustained? Certain states may attract persons to its jurisdiction by the laxity of its requirements with respect to divorce and derive thereby much benefit commercially speaking, but is divorce a subject to be handled by a board of trade? Emphatically, no.

In keeping before us the proposition that the pulse of social morals is indicated by tribunals of justice, we are not relying upon that phase of divorce to support our own contentions, which we have denied to our opponents.

Penalty. Some states impose a penalty upon the guilty party in a divorce proceeding which attaches a disability to contract a subsequent marriage. Binding as such a disability may be within the jurisdiction of the court imposing the penalty, it is easily overcome by the penalized party resorting to some jurisdiction where no such disability attaches to the guilty party. In such jurisdiction, a valid marriage may be contracted and the contracting parties enabled to return to the original jurisdiction and dwell as man and wife, recognized as such, by the very courts which imposed the disability. In other words, the variance between the laws of the several states makes possible a complete evasion of the law of some of those states. What reason may be brought to the support of such a legal anomaly? Then too, certain questions with regard to other incidents

of divorce, such as costs and alimony arise, creating the greatest bewilderment and militating against that certainty of status which is claimed to be expedient. To what end is such confusion of service to the states.

What say the opponents of unification of our divorce laws? Three general arguments will be advanced:

1. The usual argument against the amendment of the Constitution. It will be said that the Constitution would have included such a provision had the states deemed it wise to delegate this power to Congress; that to give the central government this additional power is to diminish the reserve power of the states to too great an extent, etc., etc.

Such arguments do not in any way deny that the divorce laws should be uniform among the states. In fact, by implication, we may infer a tacit acknowledgment at least, on the part of the propounder of such an argument that he is not opposed to unification itself, but merely to the further delegation of power to the central government.

The powers delegated to the central government group themselves under two heads.

a. Powers incident to the sovereignty of the United States.

b. Powers which it was deemed expedient that the United States as a sovereignty should exercise.

To the latter class belongs the power of Congress to establish uniform laws among the states on the subject of bankruptcy. The exercise of this power by Congress was permitted on the grounds of expediency and not because of some innate peculiarity of insolvency. The evils growing out of the lack of uniformity of the laws among the states on the subject of bankruptcy required energetic curtailment for the good of the states themselves and each state had come to know by bitter experience that no state by itself was able to eradicate those evils, which by their very nature were the out-

growth of co-existing sovereignties over whose jurisdictions it could exercise, no control. Since the evils then were general and each state was individually unable to destroy them, to say that the states delegated to Congress the power to make uniform laws on the subject of bankruptcy is erroneous, since a power never in the states could not be disposed of by them. The states however, did surrender to a certain extent their power to legislate as to bankruptcy, a power at times utterly unavailing in themselves, and by reason of such surrender specified that Congress might make uniform laws on that subject. In other words, by surrendering a power which was ineffective in their own hands against a deadly evil, the states were immeasurably benefitted under the common weal. And so the right which each state now reserves to make its own laws on the subject of divorce can in no way be used to the eradication of the evils due to lack of uniformity of the divorce laws among the several states. No state may now eradicate the evil growing out of the practice of its own citizens seeking the sanction of other jurisdictions to acts contrary to the laws of their own community, since no state has the power to make uniform laws upon any subject among all the states and, therefore, to enable Congress to make such laws would not be to take such a power from any or each of the states. It is true that each state would be divested of a power, that of making its own divorce laws, but by a general surrender of this right the states would authorize Congress to correct the abuses which they themselves are now powerless to reach. It is true also that the power of Congress would be increased, but to the great benefit of the states, assuming that uniform divorce laws would be beneficial, which our opponent so far has not denied.

2. There are many, however, who will contend that uniform divorce laws are not desirable on the ground that the laws governing divorce should be peculiarly

A. BERNSTEIN

influenced by local policy; they will take the ultra-conservative view that divorce laws are local issues, that environment, territorial circumstance and peculiarities in the organization of societies render a difference in such laws quite necessary among the states of the union. Facts do not support such a contention.

Let us consider three typical sections of the United States, each comprised of a number of states in which the organization of society is very similar, as a result of a common religious and social influence. First let us take that section comprised of Virginia, North Carolina, Kentucky and Tennessee. An examination of the laws of these states will disclose the fact that there are twenty-two grounds of absolute divorce recognized by one or the other of the four.[1]

Of the twenty-two grounds, but two are common among the four states, namely: a. Adultery and b. Pregnancy of wife at time of marriage unknown to husband. Of the remaining twenty grounds, but two are common to three states, Virginia, Kentucky and Tennessee, a. Abandonment, etc.; b. Conviction of felony, etc. Two others are common to Kentucky and Tennessee, a. Cruelty, etc.; b. Habitual drunkenness, etc., while seven of the remaining sixteen grounds are recognized only in Tennessee, six only in Kentucky, two only in Virginia, and only one in North Carolina.

Are the differences between the societies of Virginia, North Carolina, Kentucky and Tennessee, so great as to demand such variance in their laws? In answering this question it should be borne in mind that one of the only two grounds common to the members of this group is recognized by every state in the union which recognizes divorce, while the other is recognized by such states as Wyoming and Iowa, Kansas, Missouri, and West Virginia, besides most of the gulf states, far removed from

[1] It is possible that these figures may not be exact, due to recent changes in the laws of the various states.

the influence of the Virginia group. It is only reasonable, therefore, to deny that the peculiar needs of society are consulted by the states of that group in the adoption of laws establishing the grounds of divorce.

A second section of the United States in which society is similar to a marked degree among the states comprising it, is composed of the states of New York, Massachusetts, Connecticut, Rhode Island, New Hampshire, Vermont and Maine. Among these seven states we find twelve grounds of absolute divorce recognized with adultery as the only common ground. Two grounds only, viz.; a. Abandoment, etc.; b. Cruelty, etc., are common to six of the seven states in this group. Failure or neglect of husband to provide for wife is a ground common to the five states of Massachusetts, Rhode Island, New Hampshire, Vermont and Maine, and habitual drunkenness, etc., is a ground common to the five states of Massachusetts, Rhode Island, New Hampshire, Connecticut and Maine. Conviction of felony, etc., is a ground common to four states; impotency to three states; a religious provision to two states, one ground is recognized only in Connecticut, while the last two of the twelve grounds are recognized only in Rhode Island.

Here again, we are unwilling to grant that such social dissimilarities exist among the people of New York and the six New England states, as to justify such variance among their divorce laws.

With the exception of Louisiana, the states of the Mississippi Valley have been too greatly influenced by Virginia and Carolina, or New England and New York, to afford a distinct original social group. Let us pass on then to the Pacific coast, where a conglomerate society exists, a society which, while distinct, is not original, and which as a whole owes its character neither to the direct influence of the Cavalier and Scotch-Irish elements of Virginia and Carolina, nor to the Puritan

influence of New England, New Netherlands and New France.

Taking California, Oregon and Washington then as our third group, we find among them, eleven grounds of absolute divorce. Five of these grounds are common to the three states, two are common to Oregon and Washington, one is common to California and Washington, and the remaining three are recognized only in Washington.

Are we not constrained to ask if the character of the Washingtonian is so entirely dissimilar to that of the Californian that necessity, by reason of territorial circumstance and local peculiarities demands eleven grounds of divorce for the former, while but five seem necessary for the latter! Wherein consists the necessity?

In this third group the variance becomes all the more unwarranted when we consider the newness of the country as regards the inhabitants; the absence of segregated societies as a result of traditions and local attachments. In our eastern groups, some slight weight may be given to the plea of local issue for there, customs, the offspring of time, of three centuries of friction, revolution, and social segregation, accentuate locality. While it is true that, the sea, the mountains, the desert or the forest, may influence the race which dwells within their respective confines, yet the weight of time alone can make the impression, and we find no such factor entering into the problem of our Pacific group.

3. There will be found those also who argue that unification of the divorce laws of the several states would necessarily disturb the present status of many, and affect the marriage relation in general. Such arguments will be advanced more frequently by persons from sections of our country, wherein persons of African descent are to be found in large numbers, mixing promiscuously with the whites. It is plain to see that the fear of miscegenation prompts such an argument.

The answer to such an argument is that divorce presupposes of valid marriage. To divorce, means to separate from the condition of husband and wife, and only those can assume that relation who have been united in lawful wedlock. There can be no baron unless there be a femme. Since this is true, unification of the laws governing the release of man and woman from the marital obligation does not concern the question of who is and who is not married. That question is left as before for the states to decide to their own satisfaction, and should they make provisions rendering miscegenation unlawful, there can be no baron and femme upon which the congressional laws could act, for the laws which Congress would be empowered to make, would merely prescribe in what manner and upon what grounds those already married might be released from that relation.

The three great arguments against unification of the divorce laws among the states have been generally stated above, and a brief refutation only has been attempted, but have we not indicated the general lines along which the fallacy of those arguments is to be established?

It would appear that more forceful objections must be advanced, than those usually brought forth, in order to justify a refusal on the part of the states to authorize congressional control of the subject of divorce, and thereby correct many of the abuses attendant upon, and the evils resulting from our present system.

If divorce, as a legal institution, is to exist in one form or another amongst our people, is it not desirable that a common and well-defined channel be staked out for those seeking its haven? Is it not eminently wise that the divorce court be circumscribed by uniform safeguards among our people, and shall we not establish a supreme tribunal to pronounce the sanction of dissolution from that most sacred of all our relations?

Surely the great weight of reason leads us to regard with favor the unification of our laws on the subject of *divorce.*

UNIFORM STATE LAWS[1]

The original and unique feature of the United States Constitution is the dual sovereignty, with powers delegated to the Federal government, powers reserved to the states, and a system of limitations and checks whereby dual governments, each independent in its own sphere and within those spheres absolute over their common citizens, were created.

Of this constitution Viscount Bryce said:

> The administrative, legislative and judicial functions for which the Federal Constitution provides are those relating to matters which must be deemed common to the whole nation either because all the parts of the nation are alike interested in them or because it is only by the nation as a whole that they can be satisfactorily undertaken. The chief of these common or national matters are war and peace; treaties and foreign relations generally. Army and Navy. Federal courts of justice. Commerce, foreign and domestic. Currency. Copyright and patents, the post-office and post roads. Taxation for the foregoing purposes, and for the general support of the government. The protection of citizens against injustice or discriminating legislation by any state. This list includes the subjects upon which the national legislature has the right to legislate, the national executive to enforce the Federal laws and generally to act in defense of national interests, the national judiciary to adjudicate. All other legislation and administration is left to the several states, without power of interference by the Federal legislature or Federal executive.

While the last sentence of the above quotation is a little inaccurate, the statements of the quotation are substantially correct.

At the time the Federal Constitution was adopted communication and transportation between the states were slow, difficult, and dangerous. Trade and interstate relations were extremely limited, and slight differences in local laws were consequently of little importance. The common law of England as it was about 1776 was then the fundamental law of all the colonies, being either expressly or impliedly adopted in all the

[1] From article by George B. Young, of the Montpelier, Vt., Bar. American Bar Association Journal. 8: 181-3. March, 1922.

states, but with some diversity due to colonial statutes and to some modifications of the common law thereby made. Concerning the common law as it existed in the colonies and later in the states, Franklin said:

> The settlers of colonies in America did not carry with them the laws of the land as being bound by them wherever they should settle. They carried with them a right to such parts of the laws of the land as they should judge advantageous or useful to them; a right to be free from those they thought hurtful and a right to make such others as they should think necessary, not infringing the general rights of Englishmen; and such new laws they were to form as agreeable as might be to the laws of England.

After the adoption of the Constitution the legislation of the different states and the decisions of the courts gradually developed substantial differences in the law.

Few lawyers will deny the advantages of uniform laws concerning trade and commerce between the states, contracts between citizens of different states, and other interstate relations.

A committee of the American Bar Association in 1891 said:

> The business man may well ask: Why should not the meaning and effect of a promissory note, a bill of lading, or a guaranty be as certain and definite and practically identical in all the states as the meaning of words in an American dictionary, and for the same reason, the common convenience of all. Obviously the vast volume of interstate trade and commerce and business dealings of all kinds, growing in range and complexity to enormous proportions, is entitled to the protection and advantage of substantially uniform laws.
>
> Now a state which unites with other states in promoting such general and uniform laws in matters affecting the common interests of all the states and in the spirit of mutual compromise through mutual commissions and investigations yields in so doing nothing whatever of its state sovereignty. On the contrary, the proposed method of *voluntary state action takes from the general government any excuse for absorbing powers now confined to the states and therefore directly tends to preserve intact the independence of the states.*

In no previous equal period of the world's history has there been such tremendous progress in science, industry, transportation, and means of communication as

there has been since the adoption of the United States Constitution. In no equal period has a nation so grown and prospered and developed, improved, and populated such an extensive territory, with all its parts so closely knit together by trade, commerce, and social intercourse. Much of this development is due to the form of government which has existed in this country and the individual freedom of action thereby guaranteed. This growth of the country, these increasing facilities for communication, trade, and travel between the states, and the increased intercourse between citizens of different states have made very apparent the disadvantages arising from a lack of uniformity in laws on those subjects not within the scope of the Federal government but at the same time entering into the relations between citizens of different states and into the trade and commerce of the country. These disadvantages have developed a growing demand for uniformity which must be met either by the states or through the Federal government. *If our present system of government is to be maintained, this demand must be met by uniform statutes in the different states.* If not so met, then the Federal government will gradually assume jurisdiction over these matters, and the powers of the states over certain objects of municipal law, originally reserved to the states, will be lost to them, and a long step toward centralization will have been taken.

The great majority of the bar, of our statesmen, and of the people believe that the present constitutional form of government should be maintained, that the powers of the states should be preserved, and that those powers reserved to the state should not be taken away by the Federal government. In other words, they are opposed to the centralization of power in the Federal government at the expense of the states.

The American Bar Association was founded in 1878, and at that time the lack of uniformity in state laws

had become so serious that in the constitution of the Association it was declared:

> Its object shall be to advance the science of jurisprudence, promote the administration of justice and *uniformity of legislation and of judicial decision throughout the nation.*

In December, 1881, the Alabama State Bar Association created a committee to correspond with officers and committees of other bar associations to cause concerted action looking to uniform state legislation as to questions of national importance, principal among which were conveyances of land, attestation of wills, marriage and divorce, and negotiable instruments.

In 1888 an act was introduced in the New York legislature for the creation of a board of commissioners to confer with like commissioners to be appointed by the other states for the promotion of uniformity of legislation in the United States.

In 1889 the American Bar Association passed a resolution recommending the creation of a commission on uniformity of state laws.

It was as the outgrowth of the action in New York, which took the form of a law on the 28th of April, 1890, stimulated by the action of the American Bar Association, that the National Conference of Commissioners on Uniform State Laws came into being.

In 1891 a committee of the American Bar Association reported in favor of uniformity of legislation on the following subjects: marriage, divorce, jurisdiction in divorce cases, residence in same, descent, distribution, wills, probate, insolvency, notarial certificates, commercial paper, acknowledgement of deeds. In this report the committee said:

> The annoyances arising from variant and conflicting laws seem common to all the states, viz.: perplexity, uncertainty, confusion, with consequent waste; a tendency to hinder freedom of trade, and to occasion unnecessary insecurity in contracts, resulting in needless litigation and miscarriage of justice. As the answer of Mr. Colby of New Hampshire tersely puts it, "The continuing diversity of the laws of the various states

and territories on the subjects in question causes constant and gross waste of capital by suitors and of skilled labor by bench and bar; occasions long delays, which are substantial denials of justice; facilitates various admitted immoralities, and issues in uncertainty of law, which Burke aptly describes as the 'essence of tyranny.'"

Every lawyer whose practice causes him to study the laws of different states is only too well aware of the diversity in state laws on various subjects which enter into the relations between citizens of different states, and it is beyond the limits of this article to attempt to point out those discrepancies. They are too numerous and too extensive to tabulate here.

In the more than one hundred years that have elapsed since that time there has been no official effort to obtain greater harmony of law among the states of the Union; and it is the first time since the debates on the Constitution that accredited representatives of the several states have met together to discuss any legal question from a national point of view.

Frank J. Stimson in the American Academy of Political and Social Science in 1895, speaking of the National Conference of Commissioners on Uniform State Laws, said:

This National Conference then recommends forms of uniform statutes which each state commission, returning, presents to the governor or the legislature of its own state for enactment. *The method is a simple one; but the movement—if successful in any degree—would be the most important juristic work undertaken in the United States since the adoption of the Federal Constitution.*

Lyman D. Brewster of Connecticut, in an address before the American Bar Association some years ago, said:

Trade and commerce, education and enterprise fuse the whole country in common interests that need the kindly guardianship of uniform laws. Custom is a powerful element in the formation and interpretation of the law, and custom from one end of the country to the other is plainly growing more and more uniform. The strong tendency toward urban life, the centralization and consolidation of all the methods of interstate commerce and business intercourse of every kind, the common use

of new inventions, and the adoption of common fashions all unite to wipe away the provincial differences of former days.

On the other hand the fecundity of legislation, constantly creating new differences—the fact that many states have already adopted separate codes, perpetuating local differences—and the fact that the courts of last resort, in the larger states, now rarely cite decisions from the other states as they did a generation ago, all tend to prevent that approach to unity which the existence of the common law might be supposed to foster.

NEGATIVE DISCUSSION

BACK TO STATES' RIGHTS![1]

If we could imagine every country of the civilized world confronted with the necessity of remaking its system of government, the same choice would have to be made by all. Is it better to concentrate the powers of government or is it better to distribute them? Is it better to centralize the governmental structure in one place, so that all its activities and powers reach out from there to all parts and peoples of the country; or is it better to divide up the country, along natural and appropriate lines, into different units, and leave the people of each unit free to govern themselves, except as to matters which concern them all and to which, therefore, a uniform standard must be applied?

This question would be answered differently in different parts of the world. The history and character of the people, their growth, their development, their ideals, would all enter into it. They did enter into it when the framers of the American Constitution wrestled with it and settled it for our country, nearly a century and a half ago.

They settled it, of course, by devising a government in which only two classes of powers were centralized. These were, first, those powers affecting our relations and contact with other nations, which had to be centralized so that our foreign policy might be a united one; and, secondly, those powers which the Federal government had to have in order to operate as a government at home, powers which affected everybody in the coun-

[1] From article by Albert C. Ritchie, Governor of Maryland. World's Work. 47: 525-9. March, 1924.

try, and which, therefore, had to be exercised for everybody by a central authority. In all other respects they left everybody free to govern themselves through political units, or states, set up for the express purpose.

Certainly the soundness of this distinction between the functions of the Federal government and the functions of the states is proved by the fact that with the single exception of writing into the Constitution the three political amendments which reflected the issues settled on the battlefields of the Civil War, the marvelous growth and development of this country which took place between 1804 and 1913 all occurred without a single change in our Constitution as it existed in 1804—more than a century before.

There could be no more conclusive proof than this of the enduring soundness of the American form of government; or, of course, of the distinction between the functions of the Federal and the state governments, because that is the foundation upon which the entire structure rests.

I believe that the American people, as a whole, recognize this. I think they recognize it, not because of party reasons or political considerations, but as something which is simply so. I believe that, putting aside special interests and influences, they have come to see that on no other theory is national unity and national harmony possible in a country of one hundred and ten million people, who include fourteen million of foreign birth as well as a great colored population, residing throughout a territory three thousand miles from sea to sea, comprising agricultural communities and industrial communities, rural areas and urban settlements, and reflecting everywhere differing opinions, wants, and needs.

I believe too that, as a people, we have come to recognize that neither the power of the Federal government to legislate on national lines nor the power of the state governments to legislate in the fields reserved to

them of itself justifies the exercise of that power by either.

The Federal government should not legislate just because it legally can. Nor should the states. The test should be, is the proposed action wise? The power may exist, but is it expedient to exercise it? Not constitutionality or legality, but wisdom is the crucial thing. Does the thing proposed conform to the wants and the needs of the people who will be affected by it?

Congress may have the power, within the law, to reach out into the states of the union, and influence or control the local affairs and the personal conduct of the people living in them. Congress may have the power, within the law, to apply and enforce in all the states uniform standards on subjects about which the people of the different states in their consciences differ. But before that power should be exercised, we face the question, is it wise to do it?

QUESTION OF DIVORCE[1]

More than a quarter of a century ago Elizabeth Cady Stanton saw the true character of the movement for an amendment to the Federal Constitution giving Congress the power to legislate on marriage and divorce. She saw its true character and warned the women of America against it. After pointing out that as the movement was inspired by people who considered our divorce laws too liberal and really intended, under the plea of making them "uniform," to make them narrow. Mrs. Stanton went on to say:

> As we are still in the experimental stage on this question, we are not qualified to make a perfect law that would work satisfactorily over so vast an area as our boundaries now embrace. I see no evidence in what has been published on this question of late, by statesmen, ecclesiastics, lawyers and judges, that any of them have thought sufficiently on the subject to

[1] Freeman. 7: 150-1. April 25, 1923.

prepare a well-digested code, or a comprehensive amendment to the national Constitution.

So far as this paper can see, the situation has not changed perceptibly since 1894, when these words were written. Statesmen, ecclesiastics, lawyers and judges are quite as incompetent to speak upon the question as they were in Mrs. Stanton's day; and when they do speak, their pronouncements are likely to be marvels of ignorance and inhumanity. As for the press, it rarely touches upon the subject of marriage and divorce, except to treat it in alarmist fashion, to portray the alleged collapse of the American home, or to prophesy a dire fate for a country which dares to be even mildly humanitarian in its divorce laws. We are, as a people, quite as casual as ever in our attitude toward this question.

Mrs. Stanton says further:

> There are many advantages in leaving all these questions, as now, to the states. Local self-government more readily permits of experiments on mooted questions which are the outcome of the needs and convictions of the community. The smaller the area over which the law extends, the more pliable are the laws. By leaving the states free to experiment in their local affairs, we can judge of the working of different laws under varying circumstances, and thus learn their comparative merits. Otherwise the whole nation might find itself pledged to a scheme that a few years would prove wholly impracticable.

Then she adds further, with an old-fashioned touch: "Not only is the town meeting, as Emerson says, 'the cradle of American liberties,' but local self-government is the nursery of Yankee experiment and wisdom."

It would be interesting to know who or what persuaded the General Federation of Women's Clubs to commit itself, as it did recently, to the idea of a uniform law of marriage and divorce. Did the federation, we wonder, give a hearing to that pair of clergymen who have been lobbying for such a law so persistently for so many years? We think it is more likely that they were moved, as we all are, by the reiteration of the phrase itself, with its highly emollient qualities; our

American tendency is to be predisposed to favor anything that calls itself "uniform" or "model" or "standard."

But it is a mischievous movement that the clubwomen have embraced. Hitherto, it has taken two forms. One has been a rather weak agitation for an amendment to the Federal Constitution which would enable Congress to legislate on marriage and divorce. The other, known as the Pennsylvania movement, has been much stronger; it has contented itself with urging the adoption by all the states of a "uniform" law of marriage and divorce. This act is sometimes described as a "model act"; but of course in order to succeed, it must represent a compromise among the conflicting points of view of the various states.

Similarly, we have seen it suggested that the "model law" which the General Federation of Women's Clubs intends to push is fairly liberal in its provisions. The prospect is, however, that no matter how liberal their bill may be, the clubwomen will find that they cannot get it adopted without subjecting it to enormous pressure from those organizations which wish either to make divorce possible on one ground only, or to abolish it entirely. These organizations, whose opposition to divorce is based upon religious beliefs, naturally show a good deal of religious fervour in their crusades against it; and this has gained them an influence on American politicians which is out of all proportion to their numerical strength. A liberal bill is, therefore, quite likely to be whittled down into something quite illiberal before it becomes a law.

In matters of commerce and traffic, there is everything to be said for uniform legislation. For example, a uniform bill of lading is an obvious convenience. A uniform divorce law might also be a convenience, if it were the right kind; but what seems right to the people of Kansas might seem entirely wrong to the people of

New York. The larger the area over which a law operates, the less likely it is to be satisfactory to all the people whom it affects. Moreover, it must be remembered that regulation of commerce and regulation of human relations are two entirely different things; and in view of this fact, would it not seem wiser to hold to the present diversity in our divorce laws, than to run the risk of having uniform regulations dictated by people who do not recognize any distinction between commerce and human relations? When the advocates of a uniform divorce law tell us with proper horror in their voice that Mrs. Brown is a divorced woman under the Illinois law but not under the law of Oklahoma, the only sensible comment is: "Well, what of it?" Obviously she cannot live in both states at once; then why should she not live in that commonwealth which gives her the status she desires? This may entail inconvenience; but some such adjustment is surely far better for her than to be rendered helpless by a divorce law which may have the abstract merit of being country-wide, but which at the same time and by virtue of that very quality of uniformity, closes the door upon her escape from a condition which, for whatever reason, is no longer tolerable. If one examines the statements of the advocates of uniform divorce laws, made before the Judiciary Committee of the House of Representatives or the various state legislatures, one finds that they have shown much concern over the plight of Mrs. Brown whose divorce, valid in Illinois, is not recognized in Oklahoma; but one does not find that they have shown any concern whatever for the mismated couple who cannot or will not establish adultery or three years desertion or physical cruelty as the grounds for their divorce. We are reminded here of a note with which an enlightened clergyman sent a young couple to one of his colleagues. It ran something in this fashion: "I hope your church puts nothing in the way of your marrying these young people,

one of whom has been divorced on the ground of incompatibility. My church demands adultery."

American women owe a great deal to the comparatively liberal divorce laws of some of the states. This country had no liberal legislation on this subject until 1860, when that fine visionary, Robert Dale Owen—son of Robert Owen, English social reformer and exponent of cooperation—put through the Indiana legislature a fairly liberal law. Before that time English visitors (totally disregarding our favorite American theory that in pioneer countries women enjoy a privileged position) commented on the unenviable status of American wives. Their impotence, said the visitors, was only equalled by their shrill querulousness. Those who want to know something of the status of American women in pioneer times should read Mrs. Trollope's account of them, written in the 'forties or thereabouts. But as soon as Indiana passed a law enabling wives to free themselves from intolerable domestic yokes, women who had found the bonds of wedlock unendurable, began migrating into that state, establishing their residence—usually on money advanced by their fathers or mothers—and thus securing their divorce—and their liberty. Indiana's example spread, with the result that the position of American wives began to show a steady improvement.

Under the circumstances, we are inclined to think that the Federation of Women's Clubs, if it really wants liberal divorce laws, might much more profitably devote its time to a study of the Scandinavian divorce laws; or for that matter, the law passed not so very long ago by our own state of Washington. If we are not mistaken, that commonwealth, which has not, unfortunately, shown itself to be enlightened upon many subjects, has now upon its statute books a law providing that after a couple has been separated for five years, either husband or wife may have a divorce for the asking, without giving further grounds for the application

than the mere statement that the separation has lasted for five years. If the separation has not lasted five years, those who are reluctant to seek divorce on sensational grounds, or who have no sensational grounds to offer, may make application on the plea of incompatibility; though, of course, a case on such a plea is open to contest. This seems a fairly decent and humane arrangement; and we put it to the club-women in all good faith: Is it not better to attempt to secure such legislation in other states than to support a movement which may produce a law that is at the same time general and oppressive?

ETHICS OF DIVORCE[1]

The Divorce Congress which met at Washington and Philadelphia in 1906 as the result of legislation in Pennsylvania, and at the expense of that state, went very carefully into the subject in all of its aspects so far as it relates to the common weal. Some of the conclusions of that Congress are especially significant now when renewed efforts are being made to secure an amendment to the Constitution that will give the Federal government jurisdiction over the subjects of marriage and divorce. It is urged with great force and appositeness that this is the surest way to obtain uniformity and to secure a certain and final recognition of the decree when rendered, in all of the states.

An objection to the amendment lies in the fact that the statistics show the greatest proportion—not less than 75 per cent probably—of all divorces are regularly granted by courts having actual jurisdiction over both parties. Therefore, the evil of migratory divorces, as they are called, is far less important than at first appears. As a rule, the high social standing or wealth of the parties is the cause of great publicity, and when

[1] From article by Walter George Smith of the Philadelphia Bar, Commissioner on Uniform State Laws, and member of Committee on Marriage and Divorce. **Case and Comment. 21: 3-6. June, 1914.**

either of them seeks a foreign jurisdiction the fact is heralded as evidence of a wide-spread custom. The laws of most of the states are sufficiently liberal to make it a comparatively easy and much less expensive matter to secure a divorce in the home jurisdiction.

Another objection arises when it is shown that Federal legislation might bear hardly on the state of South Carolina, where no divorce is permitted, and yet a Federal law would give it, and in such states as New York and North Carolina, where, if the legislation should reflect the prevailing sentiment of the majority of the states, the causes would be increased from one to six.

It is an obvious tendency whenever difficulties arise because of the exclusive jurisdiction of the states in the exercise of their reserved powers, to turn to constitutional amendment in the belief that uniformity can best be obtained by throwing the burden of the subject on the already over-weighted national government.

It is a mistake to assume that the diversity of causes for divorce among the different states is the principal reason for the confusion that exists. So long as the states confine the exercise of their jurisdiction to their own citizens, it makes no practical difference what the causes may be, excepting to the citizens of those states themselves. Much of the uncertainty and scandal that have arisen have come from the assumption of jurisdiction by the courts of one state, which has failed of recognition in others. If the jurisdictional provisions of the uniform law proposed by the National Divorce Congress were adopted, the end would be gained without amendment of the Federal Constitution.

So far as causes and procedure are concerned, while uniformity is of course desirable, it is not essential. Briefly, the jurisdictional features of the uniform act provide that for purposes of annulment of marriage there must be personal service upon the defendant within the state, when either party is a *bona fide* resident

of the state at the time of the commencement of the action; and for purposes of divorce, either absolute or from bed and board, by personal service upon the defendant within the state: (a) When at the time the cause of action arose, either party was a *bona fide* resident of the state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery, or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a *bona fide* resident of the state. (b) When, since the cause of action arose, either party has become, and for at least two years next preceding the commencement of the action has continued to be, a *bona fide* resident of the state; provided the cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in this state; provided that if an inhabitant leaves the state of residence to obtain a divorce in another state for a cause arising in the state of residence, and not recognized therein, such divorce shall have no force or effect in the state of first residence. Where personal service cannot be obtained, provision is made for service by publication, to be followed, where practicable, by service upon or notice to the defendant without the state, or by additional substituted service upon the defendant within the state.

If there were any real, strong, popular discontent with existing conditions, these reasonable attempts to obtain uniformity would long since have met with approval, but so far only the states of Delaware, New Jersey, and Wisconsin have adopted the uniform act. Even Pennsylvania, whose initiative brought about the Congress of 1906, has persistently refused to accept the proposed act. Such well-meant attempts to bring about reform, as Senator Ransdell's proposal to amend the Federal Constitution so as to prohibit all absolute

divorce, and Congressman Edmunds', to give jurisdiction to the Federal government of the entire subject of marriage and divorce, would seem to be unsupported by any large proportion of the voters outside of the Catholic Church, which forbids to its members all absolute divorce. The fact is that outside the large body of Catholics, the masses of the people do not look upon existing conditions with any real appreciation of the dangers connected with them, being more concerned that the unhappiness arising from the frequent mismating of married couples shall be cured by what is called "the surgery of divorce," than with the injury entailed upon the morals of the community at large.

It would seem that there is more prospect of checking the divorce evil by amendment to existing laws intended to bring about greater publicity by requiring notice of intention and making a license a preliminary requisite to marriage, than by change in the divorce laws, so long as the present temper of the people on the subject remains unchanged.

A prolific cause of divorce in certain ranks of society is desertion by the husband, who finds it difficult or has become tired of the burden of maintaining his family. Desertion laws are being enacted in many states, which make such desertion a crime and the offender subject to extradition. He is given an opportunity under suspended sentence to work without imprisonment. If he declines, he is employed on public works or otherwise by the state, and his earnings are paid over for the support of his family. It rarely happens that the offender does not prefer to work under suspended sentence. Those who have observed the working of this law highly approve of it.

It must not be assumed that the effort to educate public opinion to an appreciation of the manifold evils arising from a lax divorce system should be given up, but the experience of those who have advocated the adoption of the uniform law, drafted by the National

Divorce Congress and afterward approved by the Conference of Commissioners on Uniform State Laws, shows that it is a task of very great magnitude to arrest the trend of society toward a low estimate of the binding effect of the marriage tie.

DIVORCE AND THE MEANS OF DIMINISHING IT[1]

The most far-reaching, as well as the most sacred compact known to man, is the marriage contract. The welfare, advancement and happiness of the human race depend upon it more than upon any other one thing. The morality, the education and the intelligence of the rising generation and of all future generations have a direct connection with the home and the fireside. With the proper surroundings and environment, the home will bring about education, morality and advancement. The influence of home life upon the child cannot be overestimated. Children who are so unfortunate as to be without pleasant and happy homes start in life seriously handicapped. Society and humanity depend for advancement upon the morality of the hearthstone. Banish the home from civilization and we should soon retrograde into barbarism and anarchy.

The marriage relation is at the very foundation of the home. Every time a home is broken up, the onward march of civilization is halted. Every divorce represents a tombstone showing the ruination of a home and the breaking of a marriage contract—a failure of the most sacred contract known. Civilization will advance or retrograde as marriage is a success or failure, for the marriage relation is the cornerstone of all human happiness and advancement. Divorce is the evil influence that retards progress, destroys happiness and ruins morality;

[1] By George W. Norris, Member of Congress from Nebraska. Editorial Review. 5: 1081-4. December, 1911.

yet the history of mankind shows that, at least under present conditions of society and civilization, it is sometimes necessary. If, therefore, it cannot be entirely eradicated, the people ought to unite in every honest effort to reduce it to a minimum.

One of the most important steps in this direction is conceded to be uniformity in the laws governing marriage and divorce. How best to bring about uniform laws in this regard has drawn the attention and the efforts of our best citizens for many years. The moral sensibilities of the people of the entire country were recently shocked by the announcement of a wedding in the highest social circles, where one of the wealthiest men of the country was compelled to go outside of the limits of his own state in order to be lawfully married. Because of the lack of uniformity of the laws on this subject, he was able to defy the laws of his own state and go into a neighboring state where the ceremony could be lawfully performed. This is only one illustration out of thousands occurring every year. Even the legitimacy of innocent children is frequently brought in question. The property right of inheritance is often left in doubt and uncertainty because, on account of our laws, men may be lawfully married in one state when under the laws of another state they would be regarded as living in adultery.

How can we best bring about a uniform law on marriage and divorce? It is conceded that under the Constitution of the United States, Congress has no jurisdiction to legislate or pass a uniform law on the subject. This is one of the powers reserved to the states and every separate state is supreme in its own territory. A marriage may be absolutely void in one state that in another would be perfectly legal. A divorce granted in one state may be entirely worthless and of no validity in another. To amend the Constitution of the United States is almost an impossibility. States are too jealous of their powers and their prerogatives to surrended their rights,

and I think it is conceded by all who have made a study of the subject that such an amendment to the Federal Constitution under existing conditions is not feasible.

If, therefore, it be impossible to bring about a uniform Federal law on marriage and divorce by reason of constitutional defects, the only method remaining is to induce the states to come to some agreement or understanding and pass the same law through all the legislatures. For many years leading men in different parts of the country and various organizations—some of them national in scope—have been bending their energies to bring about the enactment of uniform laws on marriage and divorce in all the states. These people are moved by a high and noble purpose and have done excellent work to arouse public sentiment on the question. Many of them have devoted much time, patience and ability to bring about the desired result, and there is no doubt that their labors have resulted in much good, and yet, the result obtained in the way of uniform legislation has not been at all satisfactory.

One of the reasons why better results have not been obtained is that in most of these conventions and gatherings, other subjects have been accorded greater prominence for consideration and discussion. The question of uniform laws on marriage and divorce has often been only secondary and, sometimes, is merely an incident in the general discussion and of the object of the convention. In other cases, where a uniform law on marriage and divorce is the chief and perhaps the only object of the convention, the meetings have lasted but a day or so and many of the delegates, while undoubtedly earnest and sincere, are there primarily to advance other reforms, and the consideration of a uniform marriage and divorce law is only incidental to their attendance. It is necessary for many of the delegates to travel long distances and the expense connected with the meeting has to be borne by them. This item alone prevents many able and ardent supporters of the proposition from

attending. Delegates are usually appointed by the governors of the states, not under any law of the nation or of the state, but on request of some committee or governing board. It is often necessary for a governor to select men because of their financial ability to serve rather than on account of their qualifications for the position. In view of these difficulties, the meetings are confined, as a rule, to sessions of a very few days, with the result that time and opportunity are not sufficiently afforded for the different representatives fully to compare views and seriously to discuss propositions or to study the various remedies proposed.

If a judgment is reached and a law proposed to the different states, it does not have the same moral effect upon the legislatures that it would have if the same proposition were to come from some legally constituted or organized tribunal that was by law authorized to act upon the subjects referred to it.

In the last session I introduced a joint resolution in the House of Representatives that will, I believe, remedy these defects and will result in the settlement of this difficult question in a way that will be perfectly satisfactory to all the states. This resolution provides for a congress of delegates, two from each state of the union, assembling at the invitation of the President of the United States, which would be under and by virtue of the authority of law passed by Congress. Provision is made for the payment of the expenses of the delegates not only in attending the congress, but in going to and returning therefrom. The resolution further provides that the delegates shall be appointed by the governors of their respective states; that the congress shall report to the President its findings and recommendations; and that he shall forward them to the governors of the different states, requesting that they be laid before the legislature for its information and consideration. Recommendations from a congress so constituted and acting by virtue of such a law, would command respect and con-

sideration at the hands of the legislatures that would not otherwise be shown. The judgment of such a congress would likewise receive the approval and approbation of the public sentiment of the country, and would thus appeal most strongly to the members of the different state legislatures. There would be no feeling of jealousy on the part of the states based on the theory that Congress was thereby attempting to interfere with the proper jurisdiction of the legislatures, because the law agreed upon and proposed to the several states would be one made by representatives coming from the states themselves. If Congress should take the initiative on this important subject and pave the way for the submitting to the different legislatures of such a uniform law there is no doubt that the result of the labors of this body would be satisfactory and would receive the approbation and approval of the state legislatures; that every legislature would realize the importance of that subject and the necessity for some action thereon. If the proposition should come from a congress constituted on this plan there is no doubt that one great step would have been taken toward the solution of this most important question.

UNIFORM DIVORCE LAW[1]

I marvel at the contentment which so many excellent people seem to have with the idea of a national uniform divorce law. They assume that that would end all our trouble. Now trouble with divorce goes not out that way. It is easy enough to call out of the vasty deep a uniform divorce law, but will you be satisfied with it when you get it? The question of *right* in a law deserves consideration before the matter of its *uniformity*. There is nothing more fearful, more to be dreaded, than wrong entrenched in law. We had a uniform fugitive slave law—did its uniformity make it

[1] From article by the Reverend Charles Caverno, LL.D., Lombard, Illinois. Bibliotheca Sacra. 69: 242-5. April, 1912.

right? Yet that law had a terrible hold on the public mind just because it was *law*. In the south there is a public sentiment, which is even crystalizing into law, reducing the negro from a citizen to a peon or a thrall: if that sentiment becomes uniform, will it with its resultant law be right? Yet what force that sentiment is acquiring even at the north, just because the ægis of enactment into statute is spread over it! If we are to judge by experience, we ought to fear any one bringing us the present of a uniform law on divorce. The probability is that it would be a delusion and a snare. The prime matter is not one of uniformity, but one of right. We lament the present confusion. But the little finger of wrong intrenched in a uniform law might be thicker than the loins of the wrong in the present confusion. Let us speak less of uniformity till we can tell clearly in what the uniformity should consist. Righteousness may tend to uniformity in law, but uniformity is no guaranty of right.

About as far as thought usually goes in this matter is that a uniform national law would prevent migration from state to state for the sake of divorce. But that is an inappreciable element in the divorce business, a negligible quantity. The statistics are sky-high to show that the divorce business of a state arises under state law from parties living in the state. Divorce suits in Illinois are brought by partners *bona fide* resident in Illinois, before Illinois courts, under an Illinois statute. The statute of Illinois is uniform over the state. You have uniformity in the state; shall we recommend to the other states of the nation the adoption of the Illinois statute? If not, why not? We are brought face to face with the question of the ethics of divorce law—just where we ought to be brought—to the necessity of determining what we will and what we will not justify as divorce law, what we will and what we will not recommend to the states of the nation for adoption—charged with the duty of determining what in divorce

would be right. It is better not to cry for a uniform divorce law till we know what it is to be.

Why continue to call upon somebody to draw up a bill for uniform divorce when the proposition has been twice conspicuously, if not contemptuously, turned down? A few years since a commission was appointed by the governors of many states. But their work came to naught. They were not prepared to recommend any particular statute. One that came nearest to adoption had all the vices in it of the average of the existing statutes. What profit would we have if the same amount of divorce as now came out of such a law?

The American Bar Association had a committee for years on the clauses of a divorce statute, but that committee has been discharged from further consideration of the matter. Why bawl to Baal when we get no sign that he intends to hear? *O sancta simplicitas sanctorum!* Do we issue checks in blank and give to every stroller? Ought not as much care to be taken about the filling of a divorce law as of a check? The character of a statute should first be considered, inquisition made upon the wrong which it might incorporate and entail upon society.

The Inter-Church Conference has ceased advocacy of a Jack-o'-lantern chase after a constitutional amendment and a uniform law under it. That conference seems to prefer to work upon the statutes of the states. This attitude is correct. But upon what the law should be, there has been no deliverance. If we want the nation or the states to have a uniform law, let us tell the nation or the states what law we want—what the provisions ought to be.

The great hindrance in the way of reaching a right result is that so many people want to solve all questions of casuistry, to provide for all exceptions of which they can conceive—exceptions most probably hypothetical, academic, or if actual yet rare. There will be difficulties and infelicities in every system of social regulation. It

may not argue great scope of wisdom to find fault or pick a flaw. Nothing is perfect.

As excuse for free divorce, it is said that it is hard to prove adultery. Well, what shall we do? Shall we exact a law that will open the door of divorce in suspected cases? Shall we allow other grounds of divorce in order to help a partner who cannot prove a case? Then we shall have to enact just what we have—laws so open that all marriage can run through them.

Adultery hard to prove! God be praised it is. If a thing is hard to prove there is little of it. Radium does not lie about like rocks. Hard to prove! Yet in 1904 more than a thousand cases were reported in the city of New York, and more than four hundred in the city of Chicago—enough to bear the testimony of society against the crime.

Suppose some person who might be entitled to divorce cannot make a second marriage for want of proof of adultery unless a statute has large facilities for divorce for other causes. What of it? There are a great many people who are not married at all, who live honorable lives, and their cases do not trouble us. Why this intense desire to help some one who has made a failure in marriage to make, most probably, another failure? The main objection we have to divorce statutes now is the *amount* of disruption of marriage which takes place under them. Would that objection cease if the same amount were done under a uniform law? Why ask for that which we should not be satisfied with when enacted? It is to be hoped there is righteousness enough left in religion yet to be dissatisfied with what is wrong.

DIVORCE EVIL[1]

In the first place, the divorce evil is not the divorce. Neither is the divorce the remedy for the divorce evil.

[1] From Independent. 86: 161. May 1, 1916.

The divorce evil is the evil, whatever it may be, which leads to divorce. Consequently the divorce never removes the evil. The divorce only alleviates—or aggravates—the unfortunate situation arising in some particular case from a previously existing evil.

A uniform divorce law is, therefore, no remedy for the divorce evil. A uniform divorce law is simply imposing upon the whole United States the ethical standards of one community. South Carolina permits no divorce for any cause. Oregon permits divorce for "indignities rendering life burdensome." Shall South Carolina be brought under the law of Oregon or Oregon under the law of South Carolina? Or shall both be brought under a law that neither desires? Uniformity of legal phraseology and of court procedure are desirable, so also are restrictions on interstate migration for divorce purposes. To go further than this would do little to lessen the number of divorces and nothing to lessen the divorce evil.

The alleged causes for divorce are rarely the real reasons. Unless the plaintiff is vindictive the grounds brought forward are the least serious and disgraceful that the law allows. On the other hand, those who are determined on divorce will not shrink from the ostensible commission of a statutory crime.

Neither can we infer anything as to which is the guilty party from the court records as to which brought the proceedings. People get married because they want to. People get divorced because they want to. The state refuses to marry a couple unless both express a desire to be married. The state refuses to divorce a couple if both express a desire to be divorced. Yet probably most divorced couples do actually separate by mutual consent and would much prefer not to bring disgraceful charges against one another unless the law obliged them to.

The American rate of one divorce for twelve marriages is deplored and denounced on all sides. Yet

when one knows intimately the causes which impel any particular couple to separate he usually comes to the conclusion that it would be a wrong to themselves and to the community for them to continue living together.

Whether one argues for greater or less freedom of divorce or for no divorce at all, these plain facts should be taken into consideration.

DATE DUE

MAY 7 '71

MR 2 '00

MR 24 '00

GAYLORD

PRINTED IN U.S.A.

301.42026
J65

Johnsen, Julia Emily

AUTHOR

Marriage and divorce.

TITLE

301.42026
J65 Johnsen, Julia Emily
Marriage and divorce.
45452